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REORGANIZATION PLAN

NO. \_\_\_\_\_ OF 1978

Reorganization Plan No. \_\_\_\_\_ of 1978

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, (date), pursuant to the provisions of Chapter 9 of title 5 of the United States Code.

PART I. OFFICE OF PERSONNEL MANAGEMENT

Section 101. Transfer of functions. Except as otherwise specified in Part II of this Plan, all functions of the United States Civil Service Commission, all functions of the Chairman of the Commission, and all functions of the Boards of Examiners (5 U.S.C. 1105) are hereby transferred to the Office of Personnel Management hereinafter established by this Plan.

Section 102. Establishment of the Office of Personnel Management.  
There is hereby established as an independent establishment in the Executive branch, an Office of Personnel Management hereinafter referred to as the Office. The Office shall have an official seal which shall be officially noticed and shall have its principal office in the District of Columbia, but it may have field offices in any other appropriate location.

Section 103. Director, Deputy Director, and Associate Directors. (a)  
There shall be at the head of the Office a Director of the Office of

Personnel Management hereinafter referred to as the Director. The Director shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter provided for Level II of the Executive Schedule (5 U.S.C. 5313).

(b) There shall be in the Office a Deputy Director of the Office of Personnel Management who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter provided for Level III of the Executive Schedule (5 U.S.C. 5314). The Deputy Director shall perform such functions as the Director may from time to time prescribe and shall act as Director during the absence or disability of the Director or in the event of a vacancy in the Office of the Director.

(c) No person shall, while holding office as Director or Deputy Director, hold another office or position in the Government of the United States except where provided by law or by the President.

(d) There shall be within the Office of Personnel Management not more than five Associate Directors, as determined from time to time by the Director of the Office of Personnel Management. Each such Associate Director shall be appointed by the Director, in the excepted service, shall have such title as the Director shall from time to time determine, and shall receive compensation at the rate now or hereafter prescribed for officers and positions at Level IV of the Executive Schedule (5 U.S.C. 5315).

Section 104. Functions of the Director. (a) The Director shall supervise and direct the Office of Personnel Management and may appoint such employees as the Director considers necessary to carry out the functions of the Office.

(b) The Director shall advise the President on the issuance of rules for the administration of the competitive service. The Director shall request, consider, and forward to the President without change the views of the Merit Systems Protection Board, hereinafter provided for, pertaining to the issuance of such rules.

(c) The Director shall be the principal adviser to the President on all matters pertaining to civilian employment in Executive and other Federal agencies within the jurisdiction of the Office of Personnel Management, except Presidential appointments outside the Office of Personnel Management. The Director shall, in support of this function, have the power to require statistical and narrative reports of all Executive and other Federal agencies within the jurisdiction of the Office of Personnel Management, and to review the personnel policies and practices of such agencies as necessary.

(d) The Director shall exercise program leadership in all aspects of personnel management, shall develop and promulgate personnel policies and regulations consistent with law and Presidential directive, and shall provide technical and other assistance to Executive and other Federal agencies within the jurisdiction of the Office of Personnel Management to assure effective overall management of personnel resources. This responsibility shall include:

(1) providing effective programs for examination for employment, recruitment and staffing, affirmative action, job evaluation, training and development, employee relations and services, selection and development of executives, and personnel management evaluation;

(2) providing effective mechanisms for workforce planning, staff utilization, position management, and compensation. The development of such efforts shall take into account the program responsibilities of the Office of Management and Budget;

(3) establishing and maintaining a program for the policy guidance of agencies on labor-management relations in the Federal service and assisting agencies by providing technical services related to the conduct of labor-management relations, including advice and information programs and training assistance; and

(4) conducting, or otherwise providing for studies and research for the purpose of assuring improvements in personnel management to enhance the productivity and effectiveness of the Federal workforce.

Section 105. Evaluation, Investigation, and Enforcement. (a) The Director shall conduct evaluations of the personnel policies, programs and operations of Executive and other Federal agencies within the jurisdiction of the Office of Personnel Management to determine their effectiveness, and shall require such corrective actions as needed to assure compliance with public policy as defined in the Civil Service

Rules and regulations of the President and the Office of Personnel Management, the statutes governing same and Presidential directives.

(b) When in the course of an evaluation the Director finds violations of applicable laws, rules, regulations, or directives, an appropriate investigation will be conducted, the results of which shall be reported to the agency concerned, with such instructions for corrective action as may be necessary. The head of the agency concerned shall take those actions which the Director specifically requires.

(c) The Director shall not order disciplinary action against any employee in the Executive branch (other than subordinate employees of the Office of Personnel Management). If, during the course of an evaluation or investigation under this section, the Director finds evidence of matters that come within the investigative and prosecutorial jurisdiction of the Special Counsel of the Merit System Protection Board, hereinafter provided for, the Director shall refer such evidence to the Special Counsel for appropriate disposition. The Special Counsel shall report to the Director on the disposition of the matter referred.

Section 106. Authority to Delegate Functions. The Director may, from time to time, make such provisions as the Director shall deem appropriate authorizing the performance of any function transferred to him/her hereunder by any organizational entity or employee of the Office. The Director may delegate, subject to law and such conditions

as the Director deems necessary, the performance of any function or any portion thereof transferred under this Plan to the head of any agency employing persons in the competitive civil service, if in the judgment of the Director such delegation would contribute to the efficiency and effectiveness of the service, and provided adequate provision is made for the oversight and supervision of the agency's performance of such function. The Director may suspend or revoke, in whole or in part, any delegation when in his/her judgment the revocation would be in the interest of good administration.

## PART II. MERIT SYSTEMS PROTECTION BOARD

Section 201. Merit Systems Protection Board. (a) The United States Civil Service Commission, as established by the Civil Service Act of 1883, as amended, and as subsequently organized in Chapter 11 of title 5, United States Code, is redesignated the Merit Systems Protection Board, hereinafter referred to as the Board. The Merit Systems Protection Board shall have an official seal which shall be officially noticed and shall have its principal office in the District of Columbia, but may have field offices in any other appropriate location.

(b) The Chairman of the Board shall be its chief executive and administrative officer. The Office of Executive Director, as provided for in section 1103(d) of title 5, United States Code, is hereby abolished.

(c) There shall be located within the Merit Systems Protection Board a Special Counsel, who shall be an attorney appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate now or hereafter provided for Level IV of the Executive Schedule (5 U.S.C. 5315).

Section 202. Functions remaining with the Merit Systems Protection Board After the Transfer of Functions Authorized in Part I. (a) The

Board shall exercise the adjudication and appeals authority vested in the Civil Service Commission by statute (5 U.S.C. 5335, 7521, 7701, 8347(d), 29 U.S.C. 633a, 38 U.S.C. 2023, and 42 U.S.C. 2090e-16), by Executive Order (Executive Order 11491, as amended, Section 22), by regulations and directives of the Commission, pursuant to statute (5 CFR Sections 300.104(a), 302.501-03, 315.806, 330.202, 351.901, 352.209, 352.313, 352.508, 352.607, 352.707, 353.401, 531.517, 731.401, 754.105, 831.107, 831.1101-12, 831.1205, 870.205, 871.206, 890.103, and 891.105, Federal Personnel Manual Letter No. 551-9, and Civil Service Commission Minute Number 5 of April 29, 1974, concerning examination ratings pertaining to applicants for appointment as administrative law judges) to hear and decide appeals from Federal employees and applicants, except that the administrative review of examination ratings (5 CFR 300.104(b)), of classification and job grading decisions (5 U.S.C. 5112 and 5346), and of decisions of insurance carriers denying claims of employees, annuitants, or family members (5 U.S.C. 8902(j)) is reserved to the Office of Personnel



Management. The Board shall exercise its authority in accordance with the provisions of pertinent statutes and Executive orders. Nothing in this section shall preclude the amendment or revocation of an Executive order or regulation cited in this section.

(1) Whenever the Director of the Office of Personnel Management proposes to accord a right of appeal to the Board by the exercise of regulatory authority granted him/her by statute or Executive order, he/she shall first notify the members of the Board.

(2) A member of the Board may request from the Director an advisory opinion concerning interpretation of regulations or other policy directives promulgated by the Office of Personnel Management in connection with a matter before the Board for adjudication.

(3) Whenever a regulation or other policy directive issued by the Office of Personnel Management is at issue in an appeal before the Board, the Board shall timely notify the Director, and the Director shall have standing to intervene in the proceedings and shall have all the rights of a party to the proceeding.

(4) The Director may request that the Board re-open an appeal and reconsider its decision on the grounds that the decision was based on an erroneous interpretation of law or of controlling regulations or other policy directive issued by the Office of Personnel Management.

(b) The Board shall designate one member, who shall serve as

chairman, of a performance rating board established pursuant to section 4305 of title 5, United States Code.

(c) The Chairman of the Board shall designate a representative, who shall serve as chairman, of a board of review established pursuant to section 3383(b) of title 5, United States Code.

(d) The Board shall perform the functions of the International Organizations Employees Loyalty Board, established by Executive Order 10422, January 9, 1953 (relating to security and the loyalty of applicants for employment with international organizations).

(e) The Board shall perform the functions prescribed for the Civil Service Commission in connection with appeals under 35 CFR 253.241.

(f) The Board may from time to time conduct special studies relating to the competitive civil service, and to other merit systems in the Executive branch as the President may direct, and report to the President and the Congress concerning whether the public interest in a workforce free of prohibited personnel practices is being adequately protected. In carrying out this function the Board shall make such inquiries and investigations as may be necessary, shall have access to statistical and other personnel records or information collected by the Office of Personnel Management and may require additional reports from agencies as needed. The Board shall make such recommendations to the President and the Congress as it deems appropriate.

(g) The Board may make such provision as it shall deem appropriate authorizing the performance of any function described in this

section by any organizational entity, office, or employee of the Board.

(h) The Board shall have the authority to prescribe such regulations as may be necessary for the performance of the functions enumerated in this section. The Board shall issue no advisory opinion concerning any law, statute, Presidential order or directive or any regulations or other policy directive of the Office of Personnel Management. In connection with its appellate functions the Board shall issue regulations consistent with statutory requirements defining its review procedures, the time limits within which an appeal must be filed, and the rights and responsibilities of the parties to an appeal. All regulations of the Board shall be published in the Federal Register.

(i) Savings provision. The provisions of this Reorganization Plan shall not affect appeals pending on the effective date of this Plan. The Merit Systems Protection Board shall accept appeals from agency actions effected prior to the effective date of this Plan, in accord with law and regulations in effect on that date. Proceedings before the Federal Employee Appeals Authority shall continue before an appeals officer of the Merit Systems Protection Board; proceedings before the Appeals Review Board and proceedings before the Civil Service Commission on appeal from decisions of the Appeals Review Board shall continue before the Merit Systems Protection Board. Other employee appeals heard by boards or other bodies pursuant to statute or regulation shall continue to be processed pursuant to those

statutes or regulations. Nothing herein shall affect the right of a Federal employee to judicial review under applicable law.

Section 203. Functions of the Special Counsel. (a) The Special Counsel may receive and investigate allegations of the following:

(1) prohibited political activity on the part of Federal employees in accordance with the provisions of Subchapter III of Chapter 73 of title 5, United States Code;

(2) prohibited political activity on the part of certain State and local employees in accordance with the provisions of Chapter 15 of title 5, United States Code;

(3) arbitrary or capricious withholding of information by a Federal official under the Freedom of Information Act in accordance with section 552(a)(4)(F) of title 5, United States Code;

(4) such personnel practices as may be prohibited by the Civil Service Rules, including, but not limited to, prohibited political intrusion in personnel decision-making and reprisal against employees for lawful disclosure of information concerning violation of law or regulation;

(5) discrimination by an official or employee of the Government in personnel actions, when a finding of discrimination has already been made by a court or an appropriate administrative authority;

except when the Special Counsel concludes that an allegation under

paragraphs (1), (4), or (5) may more appropriately be resolved under an administrative appeals procedure. A report of an investigation under this section shall be made available to the head of the agency concerned and to the Director of the Office of Personnel Management.

(b) During the pendency of an investigation initiated under subsection (a) of this section, the head of an agency shall not order disciplinary action against an employee whose culpability is at issue in such investigation for offenses covered by the investigation.

(c) When in the judgment of the Special Counsel, the results of an investigation warrant the taking of disciplinary action against any civilian employee in the Executive branch subject to the coverage of the laws or rules cited in subsection (a) of this section, except Presidential appointees, or against a State or local officer or employee subject to the coverage of paragraph (2) of subsection (a) of this section, the Special Counsel shall prepare charges against such employee and present them with supporting documentation to the members of the Board sitting en banc or to an administrative law judge designated by the Board. Evidence supporting the need for disciplinary action against a Presidential appointee shall be submitted by the Special Counsel to the President.

(d) Any employee not appointed by the President against whom charges are brought by the Special Counsel shall be entitled to an evidentiary hearing with the right to cross-examine witnesses and to be represented by counsel or other representative. Hearings relating to State or local officers or employees shall be conducted in accordance

with Section 1505 of title 5, United States Code.

(e) The Board shall consider all cases brought by the Special Counsel and the Board's decision shall be final with no further right of administrative appeal. The employing agency shall take the disciplinary action ordered by the Board. When the Board orders the removal of a State or local officer or employee, it shall act in accordance with the provisions of section 1506 of title 5, United States Code.

(f) The Special Counsel may appoint such legal, administrative, and support personnel as may be necessary to perform his/her functions.

(g) The Special Counsel shall have the authority to prescribe regulations as may be necessary pertaining to the receipt and investigation of matters under this section. Such regulations shall be published in the Federal Register.

(h) The Special Counsel shall issue no advisory opinion concerning any law, statute, Presidential order or directive or any regulation or other policy directives of the Office of Personnel Management.

### PART III. GENERAL PROVISIONS

Section 301. Incidental transfers. (a) So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, held, or used by, or available to, or to be made available to the Civil Service Commission, in connection

with functions affected by the provisions of this Reorganization Plan, as the Director of the Office of Management and Budget shall determine, shall be transferred to the Office of Personnel Management at such time or times as the Director of the Office of Management and Budget shall direct.

(b) Such further measures and disposition as the Director of the Office of Management and Budget shall deem to be necessary in order to effectuate the transfers provided for in subsection (a) of this section shall be carried out in such manner as the Director of the Office of Management and Budget shall direct and by such agencies as the Director of the Office of Management and Budget shall designate.

Section 302. Interim officers. (a) The President may authorize any person who immediately prior to the effective date of this Reorganization Plan held a position in the Executive branch of the Government to act as Director or Deputy Director of the Office of Personnel Management, or to act as Special Counsel of the Board, until those offices are for the first time filled pursuant to the provisions of this Reorganization Plan or by recess appointment, as the case may be.

(b) The President may authorize any person who serves in an acting capacity under the foregoing provision of this section to receive the compensation attached to the office in respect of which he/she so serves. Such compensation, if authorized, shall be in lieu of, but not in addition to, other compensation from the United States

to which such person may be entitled.

Section 303. Effective date. The provisions of this Reorganization

Plan shall take effect on July 1, 1978.



## Section Analysis

To accompany Reorganization Plan No. \_\_\_\_ of 1978  
to Transfer Certain Functions of the United States  
Civil Service Commission and to Re-Designate the  
Commission as the Merit Systems Protection Board.

This Plan establishes the Office of Personnel Management to perform the policy-making and executive responsibilities currently assigned to the Civil Service Commission, re-designates the Commission as the Merit Systems Protection Board and enumerates its appellate and merit enforcement authorities.

### Part I. Office of Personnel Management

#### Section 101. Transfer of Function.

This section transfers the policy-making, executive, and managerial functions (sometimes referred to as the "positive personnel management" functions) assigned by law or Executive order to the U.S. Civil Service Commission, its Chairman, or to Boards of Examiners under 5 USC 1105, to the Office of Personnel Management. The adjudicatory and merit enforcement functions of the Commission are otherwise provided for in Part II of the Plan.

#### Section 102. Establishment of Office of Personnel Management.

This section provides for an independent establishment in the Executive branch to be called the Office of Personnel Management. The Office will have an official seal that will be officially noticed and will have its primary office in the District of Columbia, with field offices located as may be necessary.

#### Section 103. Director, Deputy Director, and Associate Directors.

The section provides for the appointment by the President of a Director and Deputy Director of the Office of Personnel Management, by and with the advice and consent of the Senate, and for their compensation at Levels II and III respectively of the Executive Schedule. (The compensation levels parallel those for the Director and Deputy Director of the Office of Management and Budget.) The duties of the Deputy are to be prescribed by the Director and the Deputy shall act for the Director during his absence or disability or during a vacancy in the Office of the Director.

The section further provides that while serving as Director or Deputy Director, no person shall hold another office or position in the Government of the United States. The section does not exclude the Director or Deputy Director from accepting and performing ex officio duties that may be assigned by law or by the President, such as membership on committees, councils, or other bodies.

This section provides for the appointment within the excepted service of as many as five Associate Directors who shall be compensated at Level IV of the Executive Schedule and whose position titles shall be determined by the Director. The Associate Director positions are justified both on the basis of the expanded role of the Office of Personnel Management in providing policy advice and assistance to the President on civilian personnel matters (except Presidential appointments) in the Executive branch, and on the need for forceful management of improved personnel programs.

Section 104. Functions of the Director.

Subsection (a) of this section sets forth the administrative authority of the Director to supervise and direct the Office of Personnel Management and appoint such employees as he/she considers necessary for the mission of the agency.

Subsection (b) of this section provides that the Director shall advise the President on the issuance of rules for the administration of the competitive service. This duty was assigned to the Civil Service Commission by the Pendleton Act of 1883. Since both the Office of Personnel Management and the Merit Systems Protection Board, provided for in Part II of the Plan, will have a strong interest in the content of the Presidential rules, provision is made for the Director to solicit, consider, and pass on to the President without change the views of the Board.

Subsection (c) sets forth the responsibility of the Director to act as the principal Presidential advisor on all aspects of civilian employment in Executive agencies and other Federal agencies within the jurisdiction of the Office of Personnel Management. The subsection makes clear, however, that the Director is to have no role in advising the President concerning Presidential appointments other than with regard to his/her successor as Director or the appointment of a Deputy Director of the Office of Personnel Management. Since the Director will require an information base and an evaluation authority adequate to his/her advisory role, the subsection empowers the Director to levy statistical and other reporting requirements on Executive agencies and to review their personnel policies and operations.

Subsection (d) articulates the Director's leadership role and responsibility for developing and issuing personnel policies pursuant to law and Presidential directive, and for assisting Executive agencies (and others that may come within the Office's jurisdiction) to assure the most effective management of personnel resources. The specific duties enumerated

in paragraphs (1) through (4) are illustrative rather than all inclusive of the Director's leadership responsibility. Cooperation with the Office of Management and Budget is indicated for those areas--workforce planning, staff utilization, position management, and compensation--in which personnel management and budgetary considerations are most closely allied.

Section 105. Evaluation, Investigation, Enforcement.

This section provides that the Director shall evaluate the performance of the personnel function in Executive agencies and other Federal agencies and report his/her findings and conclusions to the head of the agency concerned. The purpose of the evaluation is twofold: (1) to assess the strengths and weaknesses of the agency's performance and recommend managerial and systemic improvements; and (2) to assure agency compliance with the laws, rules, regulations, and other public policies that govern the personnel function. The Director is required to report all violations to the head of the agency with instructions for corrective action, and the head of the agency must take those actions which the Director specifically requires.

The Director is not authorized to order disciplinary action against employees of other agencies. In the event the Director finds evidence of violations that come within the investigative and prosecutorial jurisdiction of the Special Counsel, as defined in Part II of the Plan, the Director is required to refer the evidence to the Special Counsel. The Special Counsel is required to report to the Director on the resolution of the matter referred.

This section, while making the Director responsible for managerial audits and for general agency compliance with laws, rules, and regulations, including corrective action, is intended to remove the Director from any prosecutorial role with regard to employees of other agencies. The Director will, of course, have the usual disciplinary powers over employees of the Office of Personnel Management.

Section 106. Authority to Delegate Functions.

This section provides that the Director may delegate any function assigned to the Office to any subordinate employee or organizational entity in the Office. The Director may also delegate, subject to law, any function or portion thereof assigned to the Office to the head of any Executive agency, if it is believed that delegation would enhance the efficiency and effectiveness of the service. In making a delegation to the head of an Executive agency, the Director may stipulate in a performance agreement the conditions and standards of the delegation. The Office must provide adequate oversight and supervision of the agency head's performance of the function. The Director must also reserve the right to revoke or suspend in whole or in part the delegation when such suspension or revocation is in the interest of good administration. The intent of this section is to enable the Director to allow agencies that

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show the interest and competence to do so, to perform more speedily and efficiently for themselves, and possibly for other agencies, certain functions and services now performed on a centralized basis by the Civil Service Commission.

## Part II. Merit Systems Protection Board.

### Section 201. Merit Systems Protection Board.

Section 201 changes the designation of the Civil Service Commission to the Merit Systems Protection Board; provides that the Board will have a seal which will be officially noticed; and requires that the Board be headquartered in the District of Columbia with field offices located as need may dictate.

Section 201 also affirms that the Chairman of the Board will be its chief executive and administrative officer and abolishes the Office of the Executive Director currently established in section 1103(d) of title 5, United States Code. The section further provides for the appointment by the President (subject to confirmation by the Senate) of a Special Counsel who shall be located in the Board, and who shall be an attorney compensated at Level IV of the Executive Schedule.

By re-designating the Civil Service Commission the Merit Systems Protection Board rather than abolishing the Commission and creating a new entity by that name, the six-year terms of the Commissioners are preserved. (The Reorganization Act does not allow for the creation of an office with a term of longer duration than that of the President.) Since the insulation of the Board from political pressure is essential to its proper functioning, legislation will be submitted lengthening the terms of members, prohibiting their reappointment, and forbidding their removal except for cause.

Since the Board will not have extensive administrative responsibilities and no operating programs, the position of Executive Director will not be needed.

The establishment of an Office of Special Counsel is intended to strengthen and increase the emphasis on the "watchdog" investigation and enforcement capabilities of the Federal Government with regard to alleged merit abuses.

### Section 202. Functions of the Merit Systems Protection Board After the Transfer of Functions Authorized in Part I.

This section sets forth the adjudicatory authority of the Board. It authorizes the Board to hear and decide appeals and complaints concerning the following matters which currently are adjudicated by the Commission:

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- (1) Withholding of within-grade salary increases (5 USC 5335);
- (2) Removal of a hearing examiner (5 USC 7521);
- (3) Adverse actions against preference eligibles (5 USC 7701);
- (4) Determinations by the Bureau of Retirement, Insurance, and Occupational Health concerning retirement applications and annuities (5 USC 8347(d) and 5 CFR 831.107, 831.1101-12, and 831.1205);
- (5) Restoration to duty following military service or following recovery or partial recovery from a compensable injury (38 USC 2023 and 5 CFR 302.501-03, 353.401);
- (6) Complaints of discrimination based on race, color, religion, national origin, age, or sex (29 USC 633a and 42 USC 2000e-16);
- (7) Adverse actions against non-preference eligibles in the competitive service (E.O. 11491, as amended);
- (8) Employment practices administered or required by the Civil Service Commission (5 CFR 300.104(a));
- (9) Terminations during probationary periods (5 CFR 315.806);
- (10) Reemployment priority lists (5 CFR 330.202);
- (11) Reduction in force (5 CFR 351.901);
- (12) Reemployment rights based on movement between Executive agencies during emergencies (5 CFR 352.209);
- (13) Reemployment rights following details or transfers to international organizations (5 CFR 352.313);
- (14) Reinstatement rights after service under the Foreign Assistance Act of 1961 (5 CFR 352.508);
- (15) Reemployment rights after service in the Economic Stabilization Program (5 CFR 352.607);
- (16) Reemployment rights after service under the Indian Self-Determination Act (5 CFR 352.707);
- (17) Retention of salaries of employees demoted to General Schedule positions without personal cause, not at their own request, and not in a reduction in force due to lack of funds or curtailment of work (5 CFR 531.517);
- (18) Disqualification of employees or applicants by the Commission based on suitability determinations (5 CFR 731.401 and 754.105);

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- (19) Denials by employing agencies of regular or optional life insurance coverage (5 CFR 870.205 and 871.206);
- (20) Refusal by employing agencies to permit employees to enroll, or to change their enrollment, in a health benefits plan (5 CFR 890.103);
- (21) Determinations by the Commission's Bureau of Retirement, Insurance, and Occupational Health that annuitants are not eligible to elect health benefits plans or to receive Government contributions related to such plans (5 CFR 891.105);
- (22) Complaints of agency non-compliance with the Fair Labor Standards Act (FPM Letter No. 551-9); and
- (23) Appeals from an examination rating or the rejection of an application in connection with an administrative law judge position (CSC Minute Number 5 of April 29, 1974).

The Board will not have the authority to adjudicate appeals from examination ratings or rejection of applications (other than those pertaining to administrative law judge positions), from position classification or job grading determinations (other than those related to adverse actions), or from decisions of insurance carriers denying claims of employees, annuitants, or family members. These matters have been determined to be more suitable for administrative review to determine accuracy and consistency with the intentions of the administrative authority.

The enumeration of appeal rights granted by Executive order and by regulation in this section should not be construed to prejudice or otherwise alter the power of the President or of the issuing agency to amend or revoke such rights. The Board is to exercise its authority in accordance with the provisions of pertinent statutes, Executive orders, and regulations as they currently read or as they may from time to time be changed by the appropriate authority.

Paragraphs (1) through (4) of subsection (a) define the relationship between the Board and the Office of Personnel Management with regard to appeals. Paragraph (1) provides that the Director of the Office of Personnel Management must notify the Board before extending any right of appeal to the Board by regulation. Paragraph (2) provides that a member of the Board may request an interpretation of regulations issued by the Office of Personnel Management in connection with an appeal; paragraph (3) provides that the Board must notify the Director whenever a regulation or other policy directive issued by his/her office is at issue in a case, and gives the Director standing to intervene in the proceedings and all the rights of a party to the proceeding and; paragraph (4) provides that the Director of the Office of Personnel Management may request that the Board reconsider a decision believed to be based on an erroneous interpretation of law or regulation issued by his/her Office. The articulation of the prerogatives of the Board and the Office of Personnel Management in the appellate area recognizes the desirability of open communications between the agency primarily responsible for issuing personnel regulations and the agency responsible for applying them in individual appellate cases.

Subsections (b) and (c) of this section provide for the designation of chairmen of performance rating boards and of chairmen of boards of review in connection with the removal of air traffic controllers from air traffic controller positions, respectively.

Subsection (d) provides that the Board shall perform the duties of the International Organizations Employees Loyalty Board relating to security and loyalty of applicants for employment with international organizations. Subsection (e) provides for the Board to perform the functions of the Civil Service Commission in connection with appeals of employees of the Canal Zone Government and the Panama Canal Company.

Subsection (f) accords the Board authority to conduct special studies relating to the competitive civil service and other merit systems in the Executive branch and to report to the President and the Congress concerning whether the public interest in a workforce free of prohibited practices is being protected. The Board is not authorized to make studies focused on other personnel matters. The Board will have access to personnel records and information collected by the Office of Personnel Management and will be authorized to gather further information by on-site reviews or by requesting reports from agencies.

Subsection (g) of this section authorizes the Board to delegate its functions and authorities under this section to its staff. Subsection (h) authorizes the Board to issue regulations governing its functions and authorities, including regulations defining its review procedures, the time limits for appealing, and the rights and responsibilities of parties to appeals. These regulations will be published in the Federal Register prior to their effective date. Subsection (h) also provides that the Board shall not issue advisory opinions concerning any law, statute, Presidential order or directive or any regulation or other policy directive of the Office of Personnel Management.

Finally, subsection (i) contains the savings provision. It provides that this Plan shall not affect pending appeals of employees and that the Board shall accept appeals from agency actions effected prior to the effective date of the Plan in accord with the laws and regulations in effect on the effective date of the Plan. It provides for the carry-over of proceedings before the Federal Employee Appeals Authority and the Appeals Review Board of the Civil Service Commission and the Civil Service Commissioners to the Board and for the completion of other appeals in process, such as appeals of performance ratings, in accord with the laws, rules, and regulations in effect on the effective date of the Reorganization Plan. The Plan does not affect the right of any employee to judicial review.

Section 203. Functions of the Special Counsel.

Subsection (a) of this section sets forth the investigative jurisdiction of the Special Counsel. It accords the Special Counsel power to investigate allegations of prohibited political activity on the part of Federal employees and of certain State and local employees. The Special Counsel

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is also authorized to investigate, pursuant to a court finding that such investigation is warranted, to ascertain whether information that should have been disclosed under the Freedom of Information Act has been withheld by a Federal official in a capricious or arbitrary manner. The Special Counsel is also given investigative jurisdiction over personnel practices prohibited by the Civil Service Rules. These practices include political interference in personnel decision-making (except with regard to those positions for which political considerations are publicly and officially recognized) and reprisal actions against employees for lawful disclosure of information related to violations of law or regulation (whistle-blowing). Finally, the Special Counsel is authorized to investigate when a finding has been made, either under an administrative complaint procedure or by a court, of discrimination as prohibited by title VII of the Civil Rights Act of 1964, as amended, by the age discrimination provisions of the Fair Labor Standards Amendments of 1974, or by Subchapter II of Chapter 71 of title 5, United States Code, to determine whether disciplinary action is needed.

The agency and employee coverage of matters within the Special Counsel's jurisdiction shall be determined under the provisions of the pertinent statutes and rules. The Special Counsel's investigative authority is limited to those specifically enumerated abuses committed by individuals and is not intended to prevent the Director of the Office of Personnel Management from directing agency compliance with rules and regulations.

The Special Counsel may decide not to investigate a matter that is brought to his/her attention under this section, when in his/her judgment the issue could more appropriately be resolved under an available appeal procedure. If an investigation is conducted, a report of the investigation must be made available to the head of the agency concerned and to the Director of the Office of Personnel Management.

Subsection (b) of this section provides that after the Special Counsel has initiated an investigation and pending its completion, the head of an agency may not order any disciplinary action against an employee who is a subject of the investigation for offenses covered by the investigation. This is to prevent the agency head from pre-empting the prosecutorial role of the Special Counsel set forth below.

Subsection (c) authorizes the Special Counsel to prepare charges based on investigations carried out under this section against State and local employees as defined in 5 USC 1504(a) and against Federal employees in the Executive branch, except Presidential appointees. Charges are presented to the Board members or to an administrative law judge designated by the Board. (In the case of a Presidential appointee, the Special Counsel refers the results of the investigation to the President.)

Subsection (d) provides that an employee against whom charges are brought is entitled to an evidentiary hearing with right to representation, and proceedings against State or local employees are conducted in accordance with 5 USC 1505. Subsection (e) stipulates that decisions of the



Board in such cases are final with no administrative right of appeal. The agency is required to take the action determined by the Board to be necessary. When the Board orders the removal of a State or local employee, it must do so in accordance with the provisions of 5 USC 1506.

Subsections (f) and (g) authorize the Special Counsel to appoint personnel needed to perform the functions of his/her office and to issue regulations governing the receipt and investigation of matters under this section. The Special Counsel's regulations must be published, prior to their effective date, in the Federal Register. Finally, subsection (h) provides that the Special Counsel shall not issue advisory opinions concerning any law, statute, Presidential order or directive or any regulation or other policy directive of the Office of Personnel Management.

### Part III. General Provisions

#### Section 301. Incidental Transfers.

Section 301 provides for the transfer to the Office of Personnel Management of Commission personnel, property, records, and funds which the Director of the Office of Management and Budget determines should be transferred.

#### Section 302. Interim Officers.

Section 302 authorizes the President to appoint employees in the Executive Branch at the time of the reorganization to act as Director and Deputy Director of the Office of Personnel Management and as Special Counsel of the Board, until those offices are filled under the provisions of this plan or by recess appointment. In addition, the President would be entitled to authorize that these officials be compensated in accordance with the salaries specified for the offices mentioned above, instead of in accordance with the offices from which they were detailed. The redesignation of the Civil Service Commission as the Merit Systems Protection Board in no way alters or interferes with the incumbency or term of office of any duly appointed Chairman, Vice-Chairman, or Member of the Civil Service Commission who becomes by virtue of this Plan, Chairman, Vice-Chairman, or Member of the Board.

#### Section 303. Effective Date.

This section prescribes July 1, 1978, as the date on which the proposed reorganization will take effect.

CIVIL SERVICE REFORM BILL

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ERRATA

1. Title II - Protection of Employee Rights

- a. Legislative language will be added to title II to retitle chapter 75 of title 5, United States Code, as "Disciplinary and Adverse Actions".
- b. Page 2.20, line 19, is corrected to read:  
"the Board, of costs, including reasonable attorney fees, incurred by an employee, when"
- c. Page 2.21, line 6, is corrected by deleting the phrase "at the request of the Office of Personnel Management".

2. Title II - Staffing

Page 3.07, line 18, is corrected by deleting subsection (k)(i) relating to the repeal of section 3306 (related to apportionment). Corresponding deletions will be made in the accompanying section analysis and statement of purpose and justification.

3. Title V - Pay for Performance.

- a. Page 5.02, line 8 is corrected to read:  
"being granted automatically as provided under this subsection"

and the word "section" deleted from line 9.

- b. Page 5.06, lines 10 - 13, is corrected by deleting Sec. 503. Pay Saving, in its entirety and renumbering Sec. 504 in line 14 as Sec. 503.

4. Title VI - Research and Demonstration Authority

Page 6.05, line 20 is corrected to read:

", or negotiation as appropriate, with the organization."

The first paragraph on page 6.03 of the accompanying section analysis is corrected to read:

"Subsection (e) requires observances of existing negotiated agreements and of the obligation to consult, or to negotiate as appropriate, with the employee organization accorded exclusive recognition, prior to conducting demonstration projects. Arrangements which are negotiated between an agency and exclusive union relative to a demonstration project, and pursuant to the authority therefor, will be tied to the duration of such project and shall not exceed the scope or term of the authority conferred. Subsection (f) requires agency consultation with employees when no exclusive representative exists, prior to conducting demonstration projects."

1 A BILL

2

3 To improve the management of personnel resources in the competitive  
4 service and the Executive branch by establishing the basic merit  
5 principles governing the Federal personnel system, proscribing  
6 those personnel practices which undermine the integrity of the  
7 merit system, strengthening the protections afforded Federal  
8 employees, enabling more efficient staffing of positions in the  
9 Federal service, establishing a comprehensive system for managing  
10 executive personnel, simplifying the system for removing employees  
11 with poor performance records, improving the basis for providing  
12 certain pay increases, authorizing research and demonstration  
13 projects for further improvement of personnel management, and  
14 improving intergovernmental personnel programs, and for other  
15 purposes.

16 Be it enacted by the Senate and House of Representatives of the United  
17 States of America in Congress assembled, that this Act may be cited as  
18 the "Civil Service Reform Act of 1978."

19 Findings and Declaration of Policy

20 Sec. 2. The Congress finds and declares that it is the policy of the  
21 United States that:

22 (1) the merit system principles which shall govern in the  
23 competitive civil service and in the Executive branch of the  
24 Federal Government be expressly stated to furnish guidance to  
25 Federal agencies in carrying out their responsibilities in

1 administering the public business and prohibited personnel  
2 practices be statutorily defined to enable government officers  
3 and employees to avoid conduct which undermines the merit  
4 principles and the integrity of the merit system.  
5 (2) Federal employees shall receive greater protection through  
6 increasing the authority and powers of the independent Merit  
7 Systems Protection Board in processing hearings and appeals  
8 affecting Federal employees and by increasing the authority and  
9 power of the Special Counsel to investigate allegations involving  
10 prohibited personnel practices and reprisals against government  
11 employees for the lawful disclosure of information concerning  
12 violation of law or regulations and his/her authority to bring  
13 disciplinary charges against agency officials and employees who  
14 engage in such conduct;  
15 (3) the function of filling position in the competitive service  
16 and in the Executive branch may be delegated in appropriate cases  
17 to the agencies to expedite processing appointments, with the  
18 control and oversight of this delegation being maintained by the  
19 Office of Personnel Management to protect against prohibited  
20 personnel practices and the use of unsound management practices  
21 by the agencies;  
22 (4) a Senior Executive Service shall be established to provide  
23 the flexibility needed by Executive agencies to recruit and  
24 retain the highly competent and qualified managers needed to  
25 provide more effective management of the Executive agencies and

1           their functions, and the more expeditious administration of the  
2           public business;  
3           (5) in appropriate instances pay increases shall be based on  
4           quality of performance rather than length of service;  
5           (6) a research and demonstration program shall be authorized to  
6           permit Federal agencies to experiment with new and different  
7           personnel management concepts in controlled situations to achieve  
8           more efficient management of the Government's human resources and  
9           greater productivity in the delivery of service to the public;  
10          (7) the training program of the Federal government shall include  
11          retraining of employees for positions in other agencies to avoid  
12          separations during reductions in force and the loss to the  
13          government of the knowledge and experience that these employees  
14          possess, and that this policy will result in maintaining the  
15          morale of the workforce and productivity of employees; and  
16          (8) a flexible and consistent Federal approach to State merit  
17          system standards required in connection with grant programs be  
18          established.

1 TITLE I MERIT SYSTEM PRINCIPLES

2

3

4 Sec. 101. Establishment of merit system principles; prohibited  
5 personnel practices.

6 Title 5, United States Code, is amended by inserting, after  
7 Chapter 1, the following new chapter:

8 "CHAPTER 2 - MERIT SYSTEM PRINCIPLES

9 "Sec.

10 "201. Coverage of principles.

11 "202. Enumeration of merit principles.

12 "203. Presidential authority.

13 "204. Prohibited personnel practices.

14 "205. Responsibility of the General Accounting Office.

15 "Sec. 201. Coverage of principles

16 "The merit system principles shall apply to --

17 "(1) an Executive agency as defined in section 105 of this  
18 title;

19 "(2) the Administrative Office of the United States Courts;

20 "(3) the Library of Congress;

21 "(4) the Botanic Garden;

22 "(5) the Government Printing Office;

23 "(6) the Office of Architect of the Capitol;

24 "(7) United States Postal Service; and

25 "(8) Postal Rate Commission.

1 "Sec. 202. Enumeration of merit principles

2 "To provide the people of the United States with a highly  
3 competent, honest and productive Federal work force reflective of the  
4 nation's diversity, and to improve the quality of public service,  
5 Federal personnel administration is to be implemented consistent with  
6 the following principles --

7 "(1) recruiting qualified candidates from appropriate  
8 sources in an endeavor to achieve a work force from all segments  
9 of society, with selection and advancement solely on the basis of  
10 objective determinations of relative ability, knowledge and  
11 skills, as determined through fair and open competition which  
12 assures that all receive equal opportunity;

13 "(2) assuring all applicants and employees of fair and  
14 equitable treatment in all aspects of personnel administration  
15 without regard to political affiliation, race, color, religion,  
16 national origin, sex, marital status, age or handicapping  
17 condition and with proper regard for their privacy and  
18 constitutional rights as citizens and Federal employees;

19 "(3) providing equal pay for work of equal value to attract  
20 and retain highly qualified personnel, with appropriate  
21 incentives and recognition for excellence in performance;

22 "(4) assuring a competent work force in which all employees  
23 maintain high standards of integrity, conduct and concern for the  
24 public interest;

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1       "(5) assuring that the work force is efficiently and  
2       effectively utilized;

3       "(6) retaining employees on the basis of the adequacy of  
4       their performance, correcting inadequate performance, and  
5       separating employees who can not or will not improve their  
6       performance to meet required standards;

7       "(7) developing and utilizing employees for better  
8       organizational and individual performance through effective  
9       education and training; and

10       "(8) assuring that employees are protected against  
11       arbitrary action, personal favoritism or coercion for partisan  
12       political purposes and are prohibited from using their official  
13       authority for the purpose of interfering with or affecting the  
14       result of an election or a nomination for office.

15       "Sec. 203. Presidential authority

16       "The President is authorized to issue Executive orders and  
17       directives as the President determines are necessary to assure that  
18       personnel management in the agencies covered by the merit system  
19       principles is based on and embodies the merit principles enumerated in  
20       section 202 of this title.

21       "Sec. 204. Prohibited personnel practices

22       "(a) for the purpose of this section, 'personnel action' means --

23               "(1) an appointment;

24               "(2) a promotion;

25

1           "(3) an adverse action under chapter 75 of this title,  
2           suspension for 30 days or less, or other disciplinary or  
3           corrective action;

4           "(4) a detail, transfer, or reassignment;

5           "(5) a reinstatement;

6           "(6) a restoration;

7           "(7) a reemployment;

8           "(8) a performance evaluation under chapter 43 of this  
9           title; and

10           "(9) a decision concerning pay, benefits, awards, education  
11           or training when the training leads to one of the actions  
12           enumerated above; with respect to an employee in, or applicant or  
13           eligible for, a position in the competitive service or a position  
14           in the excepted service in an Executive agency other than a  
15           position for which it is proper to consider political background,  
16           responsiveness, or sensitivity.

17           "(b) The head of each Executive agency and of any Federal  
18           authority employing persons in the competitive service with respect  
19           to such employees shall be responsible for personnel management,  
20           including the prevention of prohibited personnel practices hereinafter  
21           enumerated, and for the compliance with and enforcement of applicable  
22           civil service laws, Executive orders and directives, rules, and  
23           regulations. Any individual to whom the head of an Executive agency  
24           or other Federal authority delegates authority for personnel

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1 management or for any aspect thereof, shall be similarly responsible  
2 within the limits of the delegation.

3 "(c) Any employee who takes, directs others to take, recommends  
4 or approves any personnel action, or fails to take such action  
5 pursuant to his/her own authority or that delegated to him/her shall  
6 in exercising such authority or failing to exercise such authority be  
7 enjoined from:

8 "(1) unlawfully discriminating against any employee or  
9 applicant for employment on the basis of political affiliation,  
10 race, color, religion, national origin, sex, marital status, age,  
11 or handicapping condition;

12 "(2) soliciting, or considering any recommendation or  
13 statement, oral or written, with respect to any individual who  
14 requests or is under consideration for any personnel action  
15 unless the material consists solely of the types of information  
16 hereinafter described and is based on the personal knowledge of  
17 the person furnishing the statement or recommendation:

18 "(A) an evaluation of the work performance, ability  
19 aptitude, or general qualifications of such individual;  
20 and/or

21 "(B) an evaluation of the character, loyalty, and  
22 suitability of such individual.

23 "(3) using his/her official authority to take, direct  
24 others to take, recommend, or approve personnel actions to coerce  
25 the political activity of any person, to obligate any person to

1 contribute to any political fund or to render any political  
2 service, or to take any reprisal action against any person for  
3 refusal to engage in such political activity, contribute to such  
4 fund or render such service;

5 "(4) intentionally deceiving or obstructing any individual  
6 with respect to his/her right to compete for Federal employment;

7 "(5) influencing any individual to withdraw from  
8 competition for any position for which competition is required  
9 for the purpose of improving or injuring the prospects of any  
10 applicant for employment.

11 "(6) granting any preference or advantage not authorized by  
12 law to any employee or applicant for employment, including  
13 defining the scope or manner of competition or the requirements  
14 for any position, so as to enhance or injure the prospects of any  
15 particular individual;

16 "(7) appointing, employing, promoting, advancing, or  
17 advocating for appointment, employment, promotion, or  
18 advancement, in or to a civilian position in the agency in which  
19 he/she is a public official as defined in section 3110(a)(2) of  
20 this title and is serving or over which he/she exercises  
21 jurisdiction or control, any individual who is his/her relative  
22 as defined in section 3110(a)(3) of this title;

23 "(8) taking reprisal action against any employee or  
24 applicant for the exercise of any appeal right granted by law or

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1 regulation or for the lawful disclosure of information concerning  
2 violations of law or regulations.

3 "(d) This section shall not be construed to extinguish or lessen  
4 any effort to achieve equal employment opportunity through affirmative  
5 action or any right or remedy available to any employee or applicant  
6 for employment in the civil service under any law, Executive order,  
7 rule or regulation prohibiting discrimination based on political  
8 affiliation, race, color, religion, national origin, sex, marital  
9 status, age, or handicapping condition.

10 "Sec. 205. Responsibility of the General Accounting Office

11 "On a continuing basis, the General Accounting Office shall  
12 conduct audits and reviews to assure compliance with the laws,  
13 Executive orders and directives, rules, and regulations governing  
14 employment in the Executive branch and in the competitive service and  
15 to assess the effectiveness and systemic soundness of Federal  
16 personnel management."

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TITLE II PROTECTION OF EMPLOYEE RIGHTS

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Sec. 201. Merit Systems Protection Board Organization.

(a) Section 1101 of title 5, United States Code, is amended by striking out "Commissioners" in the catch-line and "United States Civil Service Commission" in the text and inserting in lieu thereof "Board members" and "Merit Systems Protection Board", respectively.

(b) Section 1102 of title 5, United States Code, is amended

(1) by striking out "Civil Service Commissioner" and "Commissioner" each place they appear and inserting in lieu thereof "Merit Systems Protection Board member" and "Board member", respectively;

(2) by striking out "6 years" in subsection (a) and in lieu thereof inserting "7 years";

(3) by striking out the period at the end of the first sentence in subsection (a) and the entire second sentence in that subsection and in lieu thereof inserting the following:

" , except that the terms of the Merit System Protection Board members in effect on July 1, 1978, shall continue and, upon expiration, appointments shall be made under the terms and conditions of this section. ";

(4) by striking out entire subsection (d) and inserting in lieu thereof a new subsection (d) as follows:

"A member may be removed by the President, upon notice

and hearing, only for misconduct, inefficiency, neglect  
of duty, or malfeasance in office, but for no other  
cause."; and

(5) by adding a new subsection (e) as follows:

"Any person appointed for a 7 year term shall not be  
eligible for reappointment to an additional term."

(c) Section 1103 of title 5, United States Code, is amended by  
striking out "Commissioners", "Civil Service Commission", and  
"Commission" each place they appear and inserting in lieu thereof  
"Board members", "Merit Systems Protection Board", and "Board"  
respectively, and by deleting from the catch-line, "Executive  
Director" and by repealing subsection (d).

Sec. 202. Special Authority Amendments.

Chapter 13 of title 5, United States Code, is amended by adding  
the following:

"SUBCHAPTER III -- MERIT SYSTEMS PROTECTION BOARD AND SPECIAL COUNSEL  
"Sec. 1331. Powers of the Merit Systems Protection Board and Special  
Counsel

"(a) Any member of the Board, the Special Counsel,  
administrative law judge, or supervisory appeals officer designated by  
the Board may issue subpoenas requiring the attendance and testimony  
of witnesses and the production of documentary or other evidence from  
any place in the United States or any territory or possession thereof,  
the Commonwealth of Puerto Rico or the District of Columbia,  
administer oaths, take or order the taking of depositions, examine

witnesses, and receive evidence. In the case of contumacy or failure  
1 to obey a subpoena, the United States District Court for the judicial  
2 district in which the person to whom the subpoena is addressed resides  
3 or is served may issue an order requiring such person to appear at any  
4 designated place to testify or to produce documentary or other  
5 evidence. Any failure to obey the order of the court may be punished  
6 by the court as a contempt thereof. Witnesses shall be paid the same  
7 fee and mileage allowances that are paid witnesses in the courts of  
8 the United States."

9 Sec. 203. Provision for Special Counsel.

10 Chapter 11 of title 5, United States Code, is amended by adding  
11 the following:

12 "Sec. 1106. Special Counsel; appointment and removal

13 "The Special Counsel in the Merit Systems Protection Board shall  
14 be an attorney appointed by the President, by and with the advice and  
15 consent of the Senate, for a term of seven years. The Special Counsel  
16 may be removed by the President, upon notice and hearing, only for  
17 misconduct, inefficiency, neglect of duty, malfeasance in office, but  
18 for no other cause."

19 Sec. 204. Authority and Responsibilities of the Special Counsel.

20 Chapter 13 of title 5, United States Code, is amended by adding  
21 the following:

22 "Sec. 1332. Authority and responsibilities of the Special Counsel with  
23 respect to whistle-blower complaints and other prohibited  
24 personnel practices  
25



1       "(a) The Special Counsel shall conduct an investigation upon  
2 request of an employee or a member of the public upon a preliminary  
3 showing that a personnel action was taken as a reprisal against an  
4 employee for having made a lawful disclosure of information concerning  
5 violation of law, Executive order, rules or regulations. In  
6 conducting the preliminary investigation, the Special Counsel shall  
7 not disclose the identity of the complainant without the consent of  
8 the complainant unless the matter warrants full investigation and such  
9 disclosure is unavoidable during the course of the investigation.

10       "(b) In cases involving alleged reprisal for the lawful  
11 disclosure of information concerning violation of law, Executive  
12 orders, rules or regulations, the Special Counsel shall have the  
13 authority, except where the personnel action is subject to an appeal  
14 to the Merit Systems Protection Board, to take the following actions:

15               "(1) To order a stay of geographic reassignment or any other  
16 personnel action which may have a substantial economic impact on  
17 the employee if the status quo is not maintained until such time  
18 as the Special Counsel completes the investigation; and

19               "(2) If the Special Counsel determines that reprisal has  
20 been taken against an employee, to report the matter to the head  
21 of the agency, and to require the head of the agency to take the  
22 action ordered by the Special Counsel including cancellation of  
23 actions substantially impacting the economic welfare of the  
24 employee and putting an end to harassing techniques. Refusal to  
25 carry out actions ordered by the Special Counsel may be a cause

1 for the filing of disciplinary charges by the Special Counsel  
2 under subsection(e).

3 "(c) When the Special Counsel determines that there are  
4 prohibited personnel practices which require corrective action, he/she  
5 may report his/her findings to the agency affected and to the Office  
6 of Personnel Management. The Special Counsel may include suggestions  
7 on how the corrective action may be effected when the agency has  
8 alternative ways to accomplish the correction, but the final decision  
9 on how the corrective action will be effected shall be made by the  
10 agency, subject to guidance and instruction from the Office of  
11 Personnel Management. The Special Counsel may furnish a copy of  
12 his/her report to the President and to the Congress.

13 "(d) If, in the course of the investigation, the Special Counsel  
14 determines that there is reasonable cause to believe that a criminal  
15 violation by a Government employee has occurred, it shall be reported  
16 to the Attorney General or the appropriate United States Attorney and  
17 to the head of the affected agency, with a copy to the Director,  
18 Office of Personnel Management and the Director, Office of Management  
19 and Budget. Any other violation of law, rules, regulations or  
20 improper action of substantial impact shall be reported to the head of  
21 the agency. The Special Counsel may require within 30 days of receipt  
22 of such report a certification by the head of the agency that he has  
23 reviewed the report; the certification shall include a statement of  
24 the action taken or to be taken and the estimated time by which it  
25 will be completed.

1       "(e) The Special Counsel may file disciplinary charges against a  
2 Federal employee before the Board. The employee shall be entitled to  
3 a hearing on the record before the Board or an administrative law  
4 judge designated by the Board. The final decision shall be made by  
5 the Board, which may impose disciplinary action including removal,  
6 demotion, debarment from Federal employment for a period not exceeding  
7 five years, suspension, reprimand, or a monetary fine not to exceed  
8 \$1,000.00. An employee so disciplined may obtain judicial review of  
9 the final decision of the Board in the United States Court of Appeals  
10 for the circuit in which he/she resides.

11       "(f) The Special Counsel may prescribe such regulations as may  
12 be necessary to carry out the purposes of this section."

13       Sec. 205. Performance Appraisal.

14       Chapter 43 of title 5, United States Code, is amended to read as  
15 follows --

16               "CHAPTER 43 -- PERFORMANCE APPRAISAL

17               "SUBCHAPTER I -- PERFORMANCE APPRAISAL -- GENERAL

18       "Sec.

19       "4301. Definitions.

20       "4302. Performance appraisal systems; establishment of.

21       "4303. Actions based on unacceptable performance.

22       "4304. Responsibilities of Office of Personnel Management.

23       "4305. Regulations.

24       "Sec. 4301. Definitions

25       "For the purpose of this subchapter --

1           "(1) 'agency' means --  
2           "(A) Executive agency as defined in section 105 of this  
3           title;  
4           "(B) the Administrative Office of the United States  
5           Courts;  
6           "(C) the Library of Congress;  
7           "(D) the Botanic Garden;  
8           "(E) the Government Printing Office; and  
9           "(F) the Office of Architect of the Capitol;  
10          but does not include --  
11          "(i) the Tennessee Valley Authority;  
12          "(ii) the Foreign Service of the United States;  
13          "(iii) a physician, dentist, nurse or other employee in  
14          the Department of Medicine and Surgery, Veterans' Adminis-  
15          tration, whose pay is fixed under chapter 73 of title 38;  
16          or  
17          "(iv) an agency or component of an agency excluded from  
18          coverage of this subchapter by regulation of the Office of  
19          Personnel Management;  
20          "(2) 'employee' means an individual employed in or under an  
21          agency, but does not include --  
22          "(A) an employee outside the United States who is paid  
23          in accordance with local native prevailing wage rates for  
24          the area in which employed;  
25

1                   "(B) an administrative law judge appointed under  
2                   section 3105 of this title;

3                   "(C) an individual in the Senior Executive Service as  
4                   defined in section 3131 of this title;

5                   "(D) an individual appointed by the President; or

6                   "(E) an individual occupying a position excluded from  
7                   coverage of this chapter by regulations of the Office of  
8                   Personnel Management, and

9                   "(3) 'unacceptable performance' means performance which is  
10                  not acceptable as a continuing level of performance.

11                  "Sec. 4302. Performance appraisal systems; establishment of

12                  "(a) Each agency shall develop one or more appraisal systems  
13                  designed to encourage quality in the performance of work by employees  
14                  and enhance productivity by --

15                  "(1) providing for periodic appraisals of job performance of  
16                  employees;

17                  "(2) encouraging employee participation in establishing  
18                  performance objectives; and

19                  "(3) using the results of performance appraisals as a basis  
20                  for developing, rewarding, reassigning, promoting, demoting, and  
21                  retaining or separating employees.

22                  "(b) Each performance appraisal system shall conform to  
23                  regulations prescribed by the Office of Personnel Management which  
24                  shall include provisions for:

25                  "(1) recognizing and rewarding employees whose performance

1           so warrants;

2               "(2) assisting employees to improve whose performance is  
3           marginal or unsatisfactory; and

4               "(3) separating employees for unacceptable performance.

5       "Sec. 4303. Actions based on unacceptable performance

6               "(a) An agency may demote or remove an employee because of  
7           unacceptable performance at any time.

8               "(b) An employee whose demotion or removal from the service is  
9           proposed because of unacceptable performance is entitled to: (1) at  
10          least 30 days' advance written notice of the action proposed which  
11          identifies the expected standard of performance and the areas in which  
12          the employee's performance is unacceptable; (2) a representative; (3)  
13          reply to the notice orally and in writing; (4) an opportunity during  
14          the notice period to demonstrate acceptable performance; and (5) a  
15          written decision stating the reasons for the decision which is  
16          concurred in by a higher level official than the official who proposed  
17          the action.

18               "(c) An agency may, in accordance with agency regulations,  
19           provide a notice period of not more than 60 days. An agency may  
20           provide a notice period of more than 60 days only in accordance with  
21           regulations issued by the Office of Personnel Management. An agency  
22           shall effect a decision to retain, remove, or demote an employee  
23           within 30 days of the date of expiration of the notice period.

24               "(d) When no action is taken because of performance improvement  
25           during the notice and the employee's performance continues to be

1 acceptable for one year from the date of the written advance warning  
2 specified in subsection (b) of this section, the record of the  
3 unacceptable performance shall be removed from the employee's official  
4 personnel folder.

5 "(e) An employee who has been demoted or removed under the  
6 provisions of subsections (b) and (c) of this section is entitled to  
7 appeal the action to the Merit Systems Protection Board. The appeal  
8 shall be conducted in accordance with the procedures established in  
9 section 7701 of this title. The appeals officer may conduct an  
10 evidentiary hearing only when there are disputes concerning material  
11 issues of fact requiring presentation of evidence. The appeals  
12 officer shall base his/her decision solely on the following factors  
13 and no others: (1) whether the agency's procedures are free of any  
14 error that substantially impairs the rights of the employee; (2)  
15 whether there has been discrimination within the meaning of prohibited  
16 personnel practices as provided by section 204(c)(1) of this title;  
17 and (3) whether the decision to demote or remove is based on  
18 reasonable evidence of unacceptable performance.

19 "(f) This section does not apply to the demotion to the grade  
20 previously held of a supervisor who has not completed the pro-  
21 bationary period under section 3321(a)(2) of this title in an initial  
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1 supervisory position, to the separation or demotion of an individual  
2 in the competitive service who has not completed a probationary or  
3 trial period or who has not completed one year of current continuous  
4 service under other than a temporary appointment limited to one year  
5 or less, or to the separation or demotion of an individual in the  
6 excepted service who has not completed one year of current continuous  
7 service in the same line of work.

8 "Sec. 4304. Responsibilities of the Office of Personnel Management

9 "(a) The Office of Personnel Management shall make technical  
10 assistance available to agencies in the development of performance  
11 appraisal systems.

12 "(b) When the Office of Personnel Management determines that a  
13 system does not meet the requirements of this subchapter and its  
14 regulations, the Office of Personnel Management shall direct the  
15 agency to implement an appropriate system or to correct operations

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1 under the system. The agency shall take the action required.

2 "Sec. 4305. Regulations

3 "The Office of Personnel Management is authorized to issue  
4 regulations to carry out the purposes of this subchapter."

5 Sec. 206. Adverse actions.

6 (a) Chapter 75 of title 5, United States Code, is amended by  
7 striking out subchapters I and II and inserting in lieu thereof the  
8 following:

9 "SUBCHAPTER I -- SUSPENSION FOR 30 DAYS OR LESS

10 "Sec. 7501. Definitions; application

11 "(a) For the purpose of this subchapter --

12 "(1) 'employee' means an individual in the competitive  
13 service who has completed a probationary or trial period or who  
14 has completed one year of current continuous employment under  
15 other than a temporary appointment limited to one year or less  
16 but does not include an individual in the Senior Executive  
17 Service as defined in section 3131 of this title; an individual  
18 occupying a position excluded from coverage of this subchapter  
19 by regulation of the Office of Personnel Management; and an  
20 individual appointed by the President; and

21 "(2) 'suspension' means the placing of an employee in a  
22 temporary nonduty-nonpay status for disciplinary reasons.

23 "(b) This subchapter does not apply to an employee --

24 "(1) whose appointment has been required by the Congress to  
25 be confirmed by, or made with the advice and consent of, the

1 Senate; or

2 "(2) whose position has been determined to be of a  
3 confidential or policy determining character by --

4 "(A) the Office of Personnel Management for a position  
5 that it has excepted from the competitive service; or

6 "(B) the head of an agency for a position which is  
7 excepted from the competitive service by statute.

8 "Sec. 7502. Actions covered

9 "This subchapter applies to a suspension for 30 days or less, but  
10 does not apply to a suspension under section 7532 of this title or an  
11 action initiated under section 203 of Reorganization Plan No. \_\_\_\_ of  
12 1978.

13 "Sec. 7503. Cause and procedure

14 "(a) Under regulations prescribed by the Office of Personnel  
15 Management, an employee may be suspended for 30 days or less only for  
16 such cause as will promote the efficiency of the service.

17 "(b) An employee against whom a suspension for 30 days or less  
18 is proposed is entitled to --

19 "(1) a written notice stating reasons for the proposed  
20 action;

21 "(2) a reasonable time to answer orally and in writing the  
22 proposed action and to furnish affidavits and other documentary  
23 evidence in support of the answer;

24 "(3) be accompanied by a representative; and  
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1           "(4) a written decision at the earliest practicable date.  
2   "Sec. 7504. Regulations  
3           "The Office of Personnel Management is authorized to issue  
4 regulations to carry out the purposes of this subchapter.  
5           "SUBCHAPTER II — REMOVAL, SUSPENSION FOR MORE THAN 30 DAYS,  
6           REDUCTION IN GRADE OR PAY, OR FURLOUGH FOR 30 DAYS OR LESS  
7   "Sec. 7511. Definitions; application  
8           "(a) For the purpose of this subchapter --  
9           "(1) 'employee' means --  
10           "(A) an individual in the competitive service who has  
11           completed a probationary or trial period or who has  
12           completed one year of current continuous employment under  
13           other than a temporary appointment limited to one year or  
14           less; and  
15           "(B) a preference eligible in an Executive agency in  
16           the excepted service, including the United States Postal  
17           Service and the Postal Rate Commission, who has completed  
18           one year of current continuous service in the same line of  
19           work;  
20           "(2) 'suspension' has the meaning as set forth in section  
21           7501 of this title;  
22           "(3) 'grade' means a level of classification under a  
23           position classification system;  
24           "(4) 'pay' means the rate of basic pay fixed by law or  
25           administrative action for the position held by an employee;

1           "(5) 'furlough' means the placing of an employee in a  
2 temporary nonduty-nonpay status because of lack of work or funds  
3 or other nondisciplinary reasons; and

4           "(6) 'hearing' means a proceeding whereby the employee and  
5 the agency, and their representatives, may introduce evidence,  
6 including testimony of the employee, agency officials, and other  
7 witnesses, and may cross-examine witnesses and challenge the  
8 introduction of evidence before an impartial official authorized  
9 to conduct the hearing and to recommend or make a decision.

10          "(b) This subchapter does not apply to an employee --

11           "(1) whose appointment has been required by the Congress to  
12 be confirmed by, or made with the advice and consent of, the  
13 Senate;

14           "(2) whose position has been determined to be of a  
15 confidential or policy-determining character by --

16           "(A) the Office of Personnel Management for a position  
17 that it has excepted from the competitive service; or

18           "(B) the head of an agency for a position which is  
19 excepted from the competitive service by statute; or

20           "(3) whose position is in the Senior Executive Service as  
21 defined by section 3131 of this title.

22          "(c) The Office of Personnel Management may extend the  
23 protections of this subchapter to any position or group of positions  
24 excepted from the competitive service by regulation of the Office of  
25 Personnel Management.

1 "Sec. 7512. Actions covered

2 "This subchapter applies to a removal, suspension for more than  
3 30 days, reduction in grade, reduction in pay of an amount exceeding  
4 one step of the employee's grade or 3% of the employee's basic pay,  
5 and to a furlough for 30 days or less; but does not apply to a  
6 suspension or removal under section 7532 of this title, a reduction in  
7 force action under section 3502 of this title, the demotion of a  
8 supervisor who has not completed the probationary period under section  
9 3321(a)(2) of this title in an initial supervisory position to the  
10 grade previously held, a demotion or removal under section 4303 of  
11 this title, or an action initiated under section 203 of Reorganization  
12 Plan No. \_\_\_\_ of 1978.

13 "Sec. 7513. Cause and procedure

14 "(a) Under regulations prescribed by the Office of Personnel  
15 Management an agency may take action against an employee only for such  
16 cause as will promote the efficiency of the service.

17 "(b) An employee against whom an action is proposed is entitled  
18 to --

19 "(1) at least 30 days' advance written notice, except when  
20 there is reasonable cause to believe him/her guilty of a crime  
21 for which a sentence of imprisonment can be imposed, stating any  
22 and all reasons, specifically and in detail, for the proposed  
23 action;

24 "(2) a reasonable time to answer orally and in writing and  
25 to furnish affidavits and other documentary evidence in support

1 of the answer;  
2 "(3) be accompanied by a representative; and  
3 "(4) a written decision and reasons therefor at the earliest  
4 practicable date.  
5 "(c) A hearing is not required in the agency but an agency may  
6 by appropriate regulation provide for one in lieu of or to supplement  
7 the oral reply.  
8 "(d) An employee as defined in section 7511 of this title,  
9 against whom an adverse action is taken, is entitled to appeal to the  
10 Merit Systems Protection Board under section 7701 of this title.  
11 "(e) Copies of the notice of proposed action, the answer of the  
12 employee when written, a summary thereof when made orally, the notice  
13 of decision and reasons therefor, and any order effecting a  
14 disciplinary action shall be made a part of records of the agency and  
15 shall be furnished to the Merit Systems Protection Board upon its  
16 request and to the individual affected upon his/her request.  
17 "Sec. 7514. Regulations  
18 "The Office of Personnel Management is authorized to issue  
19 regulations to carry out the purposes of this subchapter."  
20 (b)The analysis of subchapters I and II of chapter 75 is amended  
21 to read as follows:  
22 "CHAPTER 75 -- ADVERSE ACTIONS  
23 "SUBCHAPTER I -- SUSPENSION OF 30 DAYS OR LESS  
24 "Sec.  
25 "7501. Definitions; application.

1 "7502. Actions covered.

2 "7503. Cause and procedure.

3 "7504. Regulations.

4 "SUBCHAPTER II -- REMOVAL, SUSPENSION FOR MORE THAN 30 DAYS,

5 REDUCTION IN GRADE OR PAY, OR FURLOUGH FOR 30 DAYS OR LESS

6 "Sec.

7 "7511. Definitions; application.

8 "7512. Actions covered.

9 "7513. Cause and procedure.

10 "7514. Regulations."

11 Sec. 207. Appeals.

12 Chapter 77 of title 5, United States Code, is amended by striking  
13 out section 7701 and inserting in lieu thereof the following:

14 "Sec. 7701. Appellate procedures

15 "(a) A Federal employee or applicant for employment may submit  
16 an appeal to the Merit Systems Protection Board from any action which  
17 is appealable to the Board under statute, Executive order or  
18 directive, or regulations issued by the Office of Personnel  
19 Management. An appellant shall have the right to be accompanied by a  
20 representative. The appeal shall be processed in accordance with  
21 regulations issued by the Board.

22 "(b) The appeals officer or administrative law judge  
23 adjudicating a case appealed to the Board shall have the authority to:

24 "(1) make a decision on the record after receipt of the  
25 written representations of the parties; or

1           "(2) conduct an evidentiary hearing.

2           "(c) The decision of the deciding official shall be final unless  
3 a party to the appeal or the Office of Personnel Management petitions  
4 the Board for a review within 30 days of receipt of notice of the  
5 decision, except where the Board, for good cause shown, extends the 30  
6 day period, or unless the Board reopens and reconsiders a case on its  
7 own motion. One member of the Board may grant a petition or otherwise  
8 direct that a decision be reviewed by the full Board. This procedure  
9 shall not apply where, by statute, a decision of an administrative law  
10 judge is required to be acted upon by the Board.

11          "(d) For such time as complaints of discrimination under Title  
12 VII of the Civil Rights Act of 1964, as amended, are heard by the  
13 Board, an appeals officer assigned to hear discrimination complaints  
14 filed under section 717(b) of the Civil Rights Act of 1964, as  
15 amended, (42 U.S.C. 2000e-16) shall have the authority to make a  
16 decision on the record or to conduct an evidentiary hearing as the  
17 circumstances may warrant, pursuant to regulations prescribed by the  
18 Board. A Federal employee or applicant for Federal employment first  
19 shall submit the discrimination complaint to the agency, which shall  
20 have 60 days to resolve the complaint. If the complaint is not  
21 resolved to the employee's or applicant's satisfaction or the agency  
22 fails to issue a final decision thereon within 60 days, the employee or  
23 applicant may appeal to the Board. Such an appeal must be submitted  
24 within 30 days of notice to the employee or applicant of the agency's  
25 decision or following expiration of the 60-day period if the agency



1 has failed to issue a decision on the complaint. Class complaints of  
2 discrimination may be processed by an appeals officer pursuant to  
3 regulations prescribed by the Board.

4 "(e) The Merit Systems Protection Board or appeals officers may  
5 (1) consolidate appeals filed by two or more appellants or (2) join  
6 two or more appeals filed by the same appellant and hear and decide  
7 them concurrently when, it is determined in the exercise of sound  
8 judgment, the appeals can thereby be processed more expeditiously than  
9 they otherwise would be and without prejudice to the parties.

10 "(f) Notwithstanding the provisions of any other law, a Federal  
11 employee who has been affected by an action appealable to the Board  
12 and who alleges that discrimination prohibited by section 204(c)(1) of  
13 this title was a basis for the action shall have both the issue of  
14 discrimination and the appealable action decided by the Board in the  
15 appeal decision under the Board's appellate procedures.

16 "(g) Members of the Board and its administrative law judges and  
17 appeals officers or arbitrators assigned by the Board may require  
18 payment by the agency which is the losing party to a proceeding before  
19 the Board, of reasonable attorney fees incurred by an employee, when  
20 the employee is the prevailing party and the deciding official or  
21 officials determine that payment by the agency is warranted by the  
22 circumstances of the case.

23 "(h) As an alternative to the procedures for processing appeals  
24 subject to the jurisdiction of the Board, Federal employees and  
25 applicants for employment may elect referral of the matter concerned

1 for decision through an arbitration procedure, pursuant to regulations  
2 prescribed by the Board. When arbitration is elected, a qualified  
3 private arbitrator will be selected by the parties from lists prepared  
4 by the Board from an appropriate source. The decision of the  
5 arbitrator will be final, unless the Board reopens and reconsiders a  
6 case at the request of the Office of Personnel Management as provided  
7 for in subsection (c) of this section.

8 "(i) All agencies subject to the jurisdiction of the Merit  
9 Systems Protection Board shall comply with final decisions and orders  
10 of the Board. The Special Counsel may initiate disciplinary action  
11 against any officer or employee who knowingly and willfully refuses or  
12 fails to comply with an order of the Board. Such a disciplinary  
13 action shall be processed in accordance with the procedures set forth  
14 in section 1332(e) of this title. Noncompliance by an official who is  
15 a presidential appointee shall be reported to the President by the  
16 Special Counsel.

17 "(j) The Merit Systems Protection Board is authorized to issue  
18 regulations to carry out the purposes of this section.

19 "Sec. 7702. Judicial review of decisions of the Merit Systems  
20 Protection Board

21 "(a) Any Federal employee or applicant for employment adversely  
22 affected or aggrieved by an order or final decision of the Merit  
23 Systems Protection Board may obtain judicial review of such an order  
24 or decision.

25 "(b) A petition to review a decision or order of the Board shall

1 be filed in the Court of Claims or a United States Court of Appeals as  
2 provided in chapters 91 and 158, respectively, of title 28, except for  
3 actions filed in the United States District Courts under section  
4 2000e-16 of title 42, under sections 8715 and 8912 of this title, or  
5 under section 633a(c) of title 29. Notwithstanding the provisions of  
6 any other law, the petition for review must be filed within 30 days  
7 after the date the employee received notice of the final decision of  
8 the Board.

9 "(c) In cases filed in the Court of Claims or a United States  
10 Court of Appeals, the court shall review the administrative record for  
11 the purpose of determining whether the decision was arbitrary or  
12 capricious, and not in accordance with law, and whether the procedures  
13 required by statute and regulations were followed. The administrative  
14 decision of the Board is conclusive when supported by substantial  
15 evidence in the administrative record. When the court determines that  
16 further evidence is necessary, it shall remand the case to the Board.  
17 The Board, after such further proceedings as may be required, may  
18 modify its decision, and shall file with the court the record of such  
19 proceedings. The Board decision is conclusive when supported by  
20 substantial evidence in the administrative record as supplemented.

21 "(d) The Director of the Office of Personnel Management also may  
22 obtain review of any final order or decision of the Board by filing a  
23 petition for judicial review in the United States Court of Appeals for  
24 the District of Columbia whenever he/she disagrees with a legal  
25 interpretation by the Board of a statute or regulation involving

1 personnel administration management and for which that Office has  
2 official responsibility. In addition to the named respondent, all  
3 other parties to the proceedings before the Board and Board itself  
4 shall have the right to appear in the proceeding before the Court of  
5 Appeals. The granting of the petition for judicial review shall be at  
6 the discretion of the Court of Appeals."

7 Sec. 208. Jurisdiction of Court of Appeals Amendment.

8 Section 2342 of title 28, United States Code is hereby amended by  
9 striking out "and" at the end of paragraph (3) and by striking out the  
10 period at the end of paragraph (4) and inserting in lieu thereof "  
11 and" and by adding the following paragraph: "all final orders of the  
12 Merit Systems Protection Board except as provided for in section  
13 7702(b) of title 5, United States Code."

TITLE III STAFFING

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Sec. 301. Organization.

(a) Section 1104(a)(1) of title 5, United States Code is amended to read as follows:

"(a) The following functions are vested in the Director, Office of Personnel Management, and shall be performed by him/her or subject to his/her direction and control by such employees under his/her jurisdiction as he/she designates --

"(1) securing accuracy, uniformity, and justice in their activities;"

(b) Section 1105 is amended to read as follows:

"Sec. 1105. Delegation of authority

"Notwithstanding any other provision of this title --

"(1) the President may delegate, in whole or in part, responsibility for personnel management functions, including examining responsibility, to the Director of the Office of Personnel Management; and

"(2) the Director may delegate, in whole or in part, any function vested in the Office of Personnel Management, including examining responsibility, to the heads of other agencies employing persons in the competitive service.

(c) The analysis of chapter 11 is amended by striking out

1 "1104. Functions of the Chairman." and inserting in lieu thereof  
2 "1104. Functions of the Director."; by striking out "1105. Boards of  
3 examiners." and inserting in lieu thereof "1105. Delegation of  
4 authority." and by adding the following: "1106. Special Counsel;  
5 appointment and removal."

6 Sec. 302. Definitions.

7 Section 2108 is amended by striking out "and" at the end of  
8 paragraph (2), by striking out the period after paragraph (3) and by  
9 adding a semicolon in lieu thereof and by adding new paragraphs (4) and  
10 (5) to read as follows:

11 "(4) 'a retired member of the armed forces' means a member or  
12 former member of the armed forces who is entitled, under statute,  
13 to retired, retirement, or retainer pay on account of service as  
14 a member; and

15 "(5) a 'preference eligible' means a retired member of the  
16 armed forces only if --

17 "(A) the individual is a disabled veteran under  
18 paragraph (2) of this section; or

19 "(B) the individual did not retire at a field grade or  
20 general officer rank or the equivalent, except if the  
21 individual is a disabled veteran under paragraph (2) of this  
22 section."

23 Sec. 303. Authority for Employment.

24 (a) Chapter 31 is amended by adding at the end thereof the  
25 following:

1 "Sec. 3111. Acceptance of volunteer service.

2 "(a) For the purpose of this section 'student' means an  
3 individual who is enrolled, not less than half-time, in an institution  
4 of higher education or a secondary school.

5 "(b) Notwithstanding section 665(b) of title 31, the head of an  
6 agency may accept, subject to regulations issued by the Office of  
7 Personnel Management, voluntary and uncompensated service for the  
8 United States if the service --

9 "(1) is performed by a student, with the permission of  
10 his/her school, as part of an organized agency program  
11 established for the purpose of providing meaningful experience  
12 for the student volunteer;

13 "(2) will not be used to displace Federal workers employed on  
14 a full-time, part-time, or seasonal basis; and

15 "(3) can be accommodated within agency programs which  
16 provide meaningful experience in an organized and systematic  
17 manner.

18 "(c) An individual who provides voluntary service under  
19 subsection (b) of this section is not considered a Federal employee for  
20 the purposes of any Federal laws except injury compensation under  
21 chapter 81 of this title and tort claims under sections 2671-2680 of  
22 title 28."

23 (b) The analysis of chapter 31 is amended by adding at the end  
24 thereof:

25 "Sec. 3111. Acceptance of volunteer service."

304

1 .. Sec. 304. Examination, Certification and Appointment.

2 (a) Chapter 33 is amended by inserting after section 3303 a new  
3 section 3303a to read as follows:

4 "Sec. 3303a. Preference eligibles; appointment; time limit

5 "(a) For the purpose of this subchapter --

6 "(1) a preference eligible under section 2108(3)(A) or (B)  
7 of this title is entitled to preference in consideration for  
8 appointment for a period of not more than 10 years from the  
9 individual's separation from the armed forces;

10 "(2) a preference eligible under section 2108(3)(A) or (B)  
11 of this title, who is a retired member of the armed forces who  
12 did not retire at a field grade or general officer rank or the  
13 equivalent, is entitled to preference in consideration for  
14 appointment for a period of not more than 3 years from the  
15 individual's separation from the armed forces;

16 "(3) a preference eligible under section 2108(3)(C)-(G) of  
17 this title is entitled to preference in consideration for  
18 appointment without regard to the limitation in paragraphs (1)  
19 and (2) of this section."

20 (b) Section 3305 is amended to read as follows:

21 "Sec. 3305. Competitive service; preference eligibles; applications

22 from

23 "A preference eligible may reopen a closed examination for any  
24 position for which there is an appropriate list of eligibles resulting  
25 from competitive examination."



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1 (c) Section 3309 is amended to read as follows:  
2 "Sec. 3309. Preference eligibles; examinations; additional credit for  
3 "(a) Preference eligibles shall be referred for appointment  
4 according to the regulations issued under section 3318(c) of this  
5 title. A preference eligible who qualifies in an examination for  
6 entrance into the competitive service is entitled to be advanced  
7 beyond the earned rating, as follows --  
8 "(1) a preference eligible under section 3303a (1) or (2) of  
9 this title - 5 points;  
10 "(2) a preference eligible under section 2108(3)(C)-(G) of  
11 this title - 10 points; and  
12 "(3) a preference eligible under section 2108(3)(C) of this  
13 title, who has a compensable service connected disability of 10  
14 per cent or more, is entitled to be placed at the head of the  
15 list of eligibles, except for scientific and professional  
16 positions in GS-9 or higher, in which case the eligible is  
17 entered on the list of eligibles in the order of his/her rating.  
18 "(b) Where other rating systems are used, preference eligibles  
19 are entitled to comparable preference."  
20 (d) Section 3314 is amended by striking out "Civil Service  
21 Commission" and inserting in lieu thereof "Office of Personnel  
22 Management" and by striking out ", in the order named by section 3313  
23 of this title".  
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1           (e) Section 3315 is amended by striking out ", in the order  
2   named by section 3313 of this title" in the first sentence of  
3   subsection (a); by striking out "Civil Service Commission" in the  
4   second sentence of subsection (a) and inserting in lieu thereof  
5   "Office of Personnel Management"; and by striking out "Commission" in  
6   the first sentence of subsection (b) and inserting in lieu thereof  
7   "Office of Personnel Management".

8           (f) Section 3317 (a) is amended to read as follows:

9           "(a) The Office of Personnel Management shall prescribe  
10   regulations for the referral of candidates to a nominating or  
11   appointing authority for consideration for appointment to each vacancy  
12   in the competitive service."

13          (g) Section 3318 (a) is amended to read as follows:

14          "(a) The nominating or appointing authority shall select for  
15   appointment to each vacancy from the highest seven eligibles available  
16   for appointment, unless the Office of Personnel Management determines  
17   that another referral and selection procedure is appropriate."

18          (h) Section 3318 (c) is amended to read as follows:

19          "(c) The Office of Personnel Management may prescribe  
20   regulations for the referral and selection of qualified applicants."

21          (i) Section 3321 is amended to read as follows:

22   "Sec. 3321. Competitive service; probation; period of

23          "(a) The President may issue orders and directives which shall  
24   provide, as nearly as conditions of good administration warrant, that  
25   there shall be a period of probation --

1           "(1) before an appointment in the competitive service  
2           becomes final; and

3           "(2) before initial appointment to a supervisory or  
4           managerial position becomes final.

5           "(b) An individual who does not satisfactorily complete the  
6           probationary period under subsection (a)(2) of this section shall be  
7           returned to a position of no lower grade or pay than the position  
8           occupied by the individual prior to the supervisory or managerial  
9           assignment. Nothing in this section prohibits an agency from  
10          instituting an adverse action against an individual serving a  
11          probationary period under subsection (a)(2) for cause unrelated to  
12          supervisory or managerial performance."

13          (j) Section 3326 is amended by striking out ", and, if the  
14          position is in the competitive service, after approval by the Civil  
15          Service Commission" in subsection (b)(1); and by striking out ", or  
16          the authorization and approval, as the case may be," in subsection (c).

17          (k) The following sections of chapter 33 are repealed:

- 18               (1) section 3306 (related to apportionment);  
19               (2) section 3313 (related to registers of eligibles); and  
20               (3) section 3319 (related to members of family restriction).

21          (1) The analysis of chapter 33 is amended as follows:

- 22               (1) by inserting "3303a. Preference eligibles; appointment;  
23               time limit." after "3303. Competitive service, recommendations of  
24               Senators or Representatives.";

25

1 (2) by striking out "3305. Competitive service;  
2 examinations; when held." and inserting in lieu thereof  
3 "3305. Competitive service; preference eligibles; applications  
4 from.";

5 (3) by striking out "3306. Competitive service; departmental  
6 service; apportionment." and inserting in lieu thereof "3306.  
7 Repealed.";

8 (4) by striking out "3309. Preference eligibles;  
9 examinations; additional points for." and inserting in lieu  
10 thereof "3309. Preference eligibles; examinations; additional  
11 credit for.";

12 (5) by striking out "3313. Competitive service; register of  
13 eligibles." and inserting in lieu thereof "3313. Repealed.";

14 (6) by striking out "3317. Competitive service;  
15 certification from registers." and inserting in lieu thereof  
16 "3317. Competitive service; referral of candidates.";

17 (7) by striking out "3318. Competitive service; selection  
18 from certificates." and inserting in lieu thereof "3318.  
19 Competitive service; selection."; and

20 (8) by striking out "3319. Competitive service; selection;  
21 members of family restriction." and inserting in lieu thereof  
22 "3319. Repealed."

23 Sec. 305. Retention Preference.

24 (a) Section 3501(a) is amended by striking out "and" at end of  
25 paragraph 2 and striking out the period at the end of paragraph 3 and

1 inserting in lieu thereof ";and" and adding a new paragraph 4 as  
2 follows:

3 "(4) a preference eligible employee --

4 "(A) under section 2108(3)(A) or (B) of this title, or  
5 subsection (a)(3)(B) or (C) of this section is entitled to a  
6 preference in retention only where the effective date of  
7 reduction in force is within three years of the date of  
8 initial appointment or within three years of the date of  
9 initial return from a leave of absence after performing  
10 active military duty; or

11 "(B) under section 2108(3)(C)-(G) of this title or  
12 subsection (a)(3)(A) of this section is entitled to a  
13 preference in retention without regard to the limitation in  
14 subparagraph (A) of this paragraph."

15 (b) Section 3502(a)(2) is amended by striking out "3501(a)(3)"  
16 and inserting in lieu thereof "3501(a)(4)".

17 (c) Section 3502(a) is amended by redesignating existing  
18 paragraphs (A), (B), and (C) as (B), (C), and (D) respectively and  
19 inserting a new paragraph (A) as follows:

20 "(A) who is a preference eligible under section  
21 2108(3)(A) or (B) of this title but is no longer entitled to  
22 preference in retention under section 3501(a)(4) of this  
23 title is entitled to an additional 5 years added to his/her  
24 length of service;"

25 (d) Section 3502(b) is amended to read as follows:

1           "(b) A preference eligible employee whose performance appraisal  
2 meets a standard of adequacy under a performance appraisal system  
3 implemented under chapter 43 of this title is entitled to be retained  
4 in preference to other competing employees."

5           (e) Section 3503 is amended by striking out "each preference  
6 eligible employed" from subsection (a) and inserting in lieu thereof  
7 "each competing employee"; and by striking out "each preference  
8 eligible employed" from subsection (b) and inserting in lieu thereof  
9 "each competing employee."

10           Sec. 306. Training.

11           Section 4103 is amended by inserting the subsection identification  
12 (a) at the beginning of the section and then adding the following  
13 subsection:

14           "(b)(1) Notwithstanding any other provision of this chapter, an  
15 agency may train its employees to prepare them for placement in  
16 another agency if the head of the agency determines that the employees  
17 must otherwise be separated under conditions that would entitle them to  
18 severance pay under section 5595 of this title.

19           "(2) Prior to undertaking any training under this  
20 subsection, the head of the agency shall obtain verification from  
21 the Office of Personnel Management that there exists a reasonable  
22 expectation of placement in another agency.

23           "(3) In selecting an employee for training under this  
24 subsection, the head of the agency shall consider --

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1           "(A) the extent to which the current skills, knowledge,  
2           and abilities of the employee may be utilized in the new  
3           position;

4           "(B) the employee's capability to learn new skills and  
5           acquire new knowledge and abilities needed in the new  
6           position; and

7           "(C) the benefits to the Government which would result  
8           from retaining competent employees in the Federal service."

9           Sec. 307. Travel, Transportation, and Subsistence.

10          Section 5723(d) is amended by striking out "Commission" and  
11          inserting in lieu thereof "Office of Personnel Management"; and by  
12          striking out "not".

13          Sec. 308. Retirement.

14          Section 8336(d)(2) is amended to read as follows:

15               "(2) voluntarily, during a period when the agency in which  
16               the employee is serving is undergoing a major reorganization, a  
17               major reduction-in-force, or a major transfer of function, as  
18               determined by the Office of Personnel Management, and who is  
19               serving in such geographic areas as may be designated by the  
20               Office;"

21          Sec. 309. Extension of Veterans Readjustment Appointment  
22          Authority.

23          Section 2014(b) of title 38, United States Code, is amended by  
24          striking out the language after "Executive Order Numbered 11521" and  
25          inserting in place thereof the following:

1       "(March 26, 1970). Notwithstanding any limitations with respect  
2 to the period of eligibility as prescribed in Executive Order Numbered  
3 11521, a veteran of the Vietnam era who was eligible for appointment  
4 under that Executive order on its effective date, April 9, 1970, or a  
5 veteran of the Vietnam era who was separated on or after that date,  
6 may be appointed at any time. No veterans readjustment appointment  
7 may be made under authority of this subsection after September 31,  
8 1980."

9       Sec. 310. Effective date.

10       The amendments to the following sections of title 5, United  
11 States Code, will take effect on October 1, 1980:

12               (1) section 2108 (4) and (5)

13               (2) section 3303a

14               (3) section 3305

15               (4) section 3309

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1 TITLE IV SENIOR EXECUTIVE SERVICE

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4 Sec. 401. Coverage.

5 (a) Chapter 21 of title 5, United States Code is amended by

6 inserting after section 2101 the following new section:

7 "Sec. 2101a. The Senior Executive Service

8 "The 'Senior Executive Service' consists of positions properly  
9 classified above General Schedule 15 and below Executive Level III, or  
10 their equivalents, which meet the definition in section 3132 (b)(2) of  
11 this title and which are not excluded as provided for in section 3132  
12 (c) of this title."

13 (b) Section 2103 (a) is amended by striking out the period at  
14 the end thereof and inserting in lieu thereof the following: "or the  
15 Senior Executive Service."

16 (c) Section 2108(3) is amended by striking out the period at the  
17 end of subparagraph (G)(iii) and adding ";" and by adding to paragraph  
18 3 the following: "but does not include applicants for, or members of,  
19 the Senior Executive Service."

20 Sec. 402. Authority for Employment.

21 (a) The chapter analysis of chapter 31 is amended by inserting  
22 the following:

23 "SUBCHAPTER I -- EMPLOYMENT AUTHORITIES" after "CHAPTER 31 --  
24 AUTHORITY FOR EMPLOYMENT" and by inserting at the end thereof the  
25 following:

1 "SUBCHAPTER II -- THE SENIOR EXECUTIVE SERVICE

2 "Sec.

3 "3131. Establishment of the Senior Executive Service.

4 "3132. Definitions and exclusions.

5 "3133. Authorization for number of Senior Executive Service  
6 positions.

7 "3134. Limitations on noncareer Senior Executive Service appointments.

8 "3135. Biennial Report.

9 "3136. Regulations.";

10 (b) by adding immediately below new section 3111 (acceptance of  
11 volunteer service) the following new subchapter:

12 "SUBCHAPTER II -- THE SENIOR EXECUTIVE SERVICE

13 "Sec. 3131. Establishment of the Senior Executive Service

14 "(a) It is the purpose of this subchapter to establish and  
15 provide for a Senior Executive Service in order to ensure that the  
16 executive management of the Government of the United States is of the  
17 highest quality and is responsive to the needs, policies, and goals of  
18 the nation it serves. The Senior Executive Service shall be  
19 administered to accomplish the following objectives:

20 "(1) provide for a compensation system, including salary,  
21 benefits, incentives, and other conditions of employment,  
22 designed to attract, reinforce and retain excellent Government  
23 managers;

24 "(2) establish a link between managerial success and  
25 compensation and retention. Managerial effectiveness will be

1 measured by individual performance and organizational  
2 accomplishment, including economy and efficiency of operations;  
3 "(3) make tenure as an executive contingent on successful  
4 performance;  
5 "(4) recognize exceptional accomplishment;  
6 "(5) enable the head of an agency to reassign and transfer  
7 Senior Executive Service employees to best accomplish its  
8 mission;  
9 "(6) provide for severance pay, retirement benefits, and  
10 placement assistance for those who are removed from the Service  
11 for nondisciplinary reasons;  
12 "(7) protect Senior Executive Service employees from  
13 arbitrary or capricious actions;  
14 "(8) provide for both program continuity and policy advocacy  
15 in the management of public programs;  
16 "(9) maintain a merit personnel system free of improper  
17 political interference;  
18 "(10) ensure accountability for honest, economical, and  
19 efficient Government;  
20 "(11) see that there is faithful adherence to the laws and  
21 requirements regarding equal employment opportunity, political  
22 activity, and conflicts of interests; and  
23 "(12) provide for the systematic development of talented and  
24 effective executives and for the continuing development of  
25 incumbents.

1 "Sec. 3132. Definitions and exclusions

2 "(a) The provisions of this subchapter shall apply to those  
3 agencies set forth in section 201 of this title except as hereinafter  
4 provided.

5 "(b) For the purpose of this subchapter --

6 "(1) 'agency' does not include any agency or component  
7 thereof excluded from coverage by the President under subsection  
8 (c) of this section;

9 "(2) 'Senior Executive Service position' means a position  
10 above the GS-15 or equivalent level in which the incumbent --

11 "(A) directs the work of an organizational unit;

12 "(B) is held accountable for the success of specific  
13 line or staff programs or projects;

14 "(C) monitors the progress of the organization toward  
15 goals and periodically evaluates and makes appropriate  
16 adjustments to these goals; or

17 "(D) supervises the work of employees other than  
18 personal assistants.

19 "(3) 'executive' means a member of the Senior Executive  
20 Service;

21 "(4) 'career reserved position' means a position that can  
22 only be filled by a career appointee or under a limited emergency  
23 or term appointment. Career reserved positions are positions in  
24 which it is justifiable to restrict appointments to career  
25

1 employees in order to insure impartiality or the public's  
2 confidence in the impartiality of the Government. The Office of  
3 Personnel Management shall prescribe the position criteria and  
4 regulations governing the designation of career reserved  
5 positions. The designation of a career reserved position is made  
6 by the agency; non-designation is subject to post audit by the  
7 Office of Personnel Management.

8 "(5) 'general position' means any position other than those  
9 identified as career reserved positions. General positions may  
10 be filled by either a career or noncareer appointee or under a  
11 limited emergency or term appointment;

12 "(6) 'career appointee' means an individual appointed to a  
13 Senior Executive Service position based on selection through a  
14 merit staffing process consistent with Office of Personnel  
15 Management regulations and, in the case of initial appointment,  
16 approval of managerial qualifications by the Office of Personnel  
17 Management;

18 "(7) 'noncareer appointee' means an individual appointed to  
19 a Senior Executive Service position without approval of  
20 managerial qualifications by the Office of Personnel Management;

21 "(8) 'limited emergency appointment' means a nonrenewable  
22 appointment not to exceed eighteen months to a position  
23 established to meet a bona fide, unanticipated, urgent need; and  
24  
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1           "(9) 'limited term appointment' means a nonrenewable  
2           appointment for a maximum of three years to a position the duties  
3           of which will expire during that time period.

4           "(c) An agency may file with the Office of Personnel Management  
5           an application, setting forth reasons why it, or a component thereof,  
6           should be excluded from placing positions in the Senior Executive  
7           Service. The Office of Personnel Management shall review the  
8           application and reasons and undertake such other investigation as it  
9           considers appropriate to determine whether the agency or agency  
10          component should be excluded from coverage of this subchapter. Upon  
11          completion of its review, the Office of Personnel Management shall  
12          recommend to the President whether the agency or component should be  
13          so excluded, upon written determination by the President.

14          "(d) Any agency or agency component which is excluded from  
15          coverage under subsection (c) of this section shall make a sustained  
16          effort to bring its personnel system into conformity with the Senior  
17          Executive Service and revocation of the exclusion shall be effected  
18          upon written determination by the President.

19          "(e) The Office of Personnel Management may at any time  
20          recommend to the President that the exclusion from coverage previously  
21          granted to an agency or agency component under subsection (c) of this  
22          section be revoked.

23          "(f) If any exclusion from this subchapter of any agency or  
24          agency component is made under subsection (c) of this section, the  
25          Office of Personnel Management forthwith shall transmit to Congress,

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1 for reference to the appropriate committee of the Senate and the  
2 appropriate committee of the House of Representatives, information  
3 concerning the exclusion.

4 "(g) The Office of Personnel Management shall also forthwith  
5 transmit to Congress, for reference to the appropriate committee of  
6 the Senate and the appropriate committee of the House of  
7 Representatives, information as to any revocation of exclusion made  
8 under subsection (d) of this section.

9 "Sec. 3133. Authorization for number of Senior Executive Service  
10 positions

11 "(a) Each agency shall in odd numbered years --

12 "(1) examine its total needs for Senior Executive Service  
13 positions for the next following two fiscal years; and

14 "(2) submit to the Office of Personnel Management, in  
15 accordance with regulations prescribed by the Office, a written  
16 request for authority to establish the specific number of  
17 positions as Senior Executive Service positions.

18 "(b) Each agency request submitted under subsection (a) of this  
19 section shall --

20 "(1) be submitted at such time and in such form as the  
21 Office of Personnel Management shall prescribe; and

22 "(2) be based on the following factors:

23 "(A) the anticipated program activity and budget  
24 requests of the agency for the next two fiscal years;

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1                   "(B) the anticipated level of work to be performed by  
2                   the agency in the next two fiscal years; and

3                   "(C) such other factors as may be prescribed from time  
4                   to time by the Office of Personnel Management.

5                   "(c) The Office of Personnel Management, upon consultation with  
6                   the Office of Management and Budget, shall review the request of each  
7                   agency and subject to section 3135 of this title, shall authorize --

8                   "(1) the establishment of a specific number of Senior  
9                   Executive Service positions in each agency; and

10                  "(2) the number of positions in the entire Senior Executive  
11                  Service together with an unallocated pool of not more than 5% of  
12                  the number of allocated positions.

13                  "(d) Authorizations made under subsection (c) of this section  
14                  shall remain in effect until changed in accordance with subsection  
15                  (e), (g) or (h) of this section.

16                  "(e) Each agency may submit to the Office of Personnel  
17                  Management, in accordance with regulations prescribed by the Office, a  
18                  written request for adjustments to its authorized number of Senior  
19                  Executive Service positions. The Office of Personnel Management may,  
20                  on its own initiative, make reductions in the numbers of positions  
21                  assigned to particular agencies.

22                  "(f) Each agency adjustment request submitted under subsection  
23                  (e) of this section shall be submitted in such form as the Office of  
24                  Personnel Management shall prescribe and be based on the then current  
25                  budget and program activity in the agency.



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1       "(g) Subject to subsections (e) and (f) of this section, the  
2       Office of Personnel Management may make changes in the allocations  
3       made under subsection (c) of this section. The total of all  
4       adjustments made during a fiscal year under this subsection may not  
5       enlarge the entire Senior Executive Service beyond the number  
6       identified in subsection (c) of this section.

7       "(h) The Office of Personnel Management report to Congress,  
8       provided for in section 3135 of this title, relating to the projected  
9       number of positions in the total Senior Executive Service and in each  
10      agency, becomes effective as the authorized number on the next  
11      succeeding October 1 following submission of the report unless an  
12      alternative number is approved by both Houses of Congress prior to the  
13      October 1 date.

14      "Sec. 3134. Limitations on noncareer Senior Executive Service  
15      appointments

16      "(a) Each agency shall each year --

17              "(1) examine its needs for employment of noncareer Senior  
18      Executive Service appointees for the next following fiscal year;  
19      and

20              "(2) submit to the Office of Personnel Management, in  
21      accordance with regulations prescribed by the Office, a written  
22      request for authority to make a specific number of noncareer  
23      Senior Executive Service appointments.

24      "(b) The number of noncareer appointments for each agency will  
25      be determined biennially by the Office of Personnel Management

1 according to demonstrated need of the agency for such positions,  
2 provided that the number of noncareer appointees to the Senior  
3 Executive Service, Government-wide, does not exceed 15 percent of the  
4 total number of Senior Executive Service positions, Government-wide,  
5 based on the authorizations made according to section 3133 of this  
6 title.

7 "(c) The number of noncareer positions authorized for any agency  
8 under subsections (a) and (b) of this section may be adjusted by the  
9 Office of Personnel Management for emergency needs that were not  
10 anticipated when the original authorizations were made, provided that  
11 the number of noncareer executives, Government-wide, does not exceed  
12 15 percent of the total number of Senior Executive Service positions.  
13 "Sec. 3135. Biennial Report

14 "(a) The Office of Personnel Management shall submit to Congress,  
15 at the time the budget is submitted to the first session of each  
16 Congress, a report on the Senior Executive Service. The report shall  
17 include --

18 "(1) the current authorized number of positions in the  
19 Senior Executive Service and in each agency and the projected  
20 number of positions to be authorized for the next two fiscal  
21 years;

22 "(2) each exclusion in the then current fiscal year from  
23 this subchapter of any employee or group of employees under  
24 authority of section 3132(c) of this title; and  
25

1           "(3) such other information on the overall program for the  
2           managment of the Senior Executive Service as the Office of  
3           Personnel Management considers appropriate.

4           "(b) The Office of Personnel Management shall submit to  
5           Congress, at the time the budget is submitted to the second session of  
6           each Congress, an interim report showing adjustments to the biennial  
7           report as authorized in section 3133(e),(f),(g) and (h) of this  
8           title.

9           "Sec. 3136. Regulations

10           "The Office of Personnel Management shall prescribe regulations  
11           necessary to carry out the purpose of this subchapter."

12           (c) Section 3104(a) is amended by inserting the word  
13           "nonmanagerial" after the word "establish".

14           (d) Section 3109 is amended by inserting at the end thereof the  
15           following:

16           "(c) Positions in the Senior Executive Service may not be filled  
17           under the authority of subsection (b) of this section."

18           Sec. 403. Examination, Certification and Appointment.

19           Chapter 33 of title 5, United States Code, is amended --

20           (1) by inserting the following in the chapter analysis after  
21           subchapter VII:

22                        "SUBCHAPTER VIII -- SENIOR EXECUTIVE SERVICE  
23                        APPOINTMENT, PLACEMENT, TRANSFER AND DEVELOPMENT

24           "Sec.

25           "3391. General appointment provisions.

- 1 "3392. Career appointments to the Senior Executive Service.
- 2 "3393. Noncareer appointments to the Senior Executive Service.
- 3 "3394. Limited appointments to the Senior Executive Service.
- 4 "3395. Placement and transfer within the Senior Executive Service.
- 5 "3396. Development for and within the Senior Executive Service.
- 6 "3397. Regulations."; and

7 (2) by inserting immediately after section 3385 the  
8 following new subchapter:

9 "SUBCHAPTER VIII -- SENIOR EXECUTIVE SERVICE  
10 APPOINTMENT, PLACEMENT, TRANSFER AND DEVELOPMENT

11 "Sec. 3391. General appointment provisions

12 "(a) Qualification standards for all Senior Executive Service  
13 positions shall meet the requirements established by the Office of  
14 Personnel Management and in the case of most Presidential appointees  
15 the confirmation of the Senate.

16 "(b) Appointees shall meet the qualifications of the positions  
17 to which they are appointed.

18 "(c) The appointing authority is responsible for determining  
19 that a selectee meets the qualification requirements for a particular  
20 position.

21 "(d) Discrimination on account of race, color, religion,  
22 national origin, sex, marital status, age and handicapping condition  
23 is prohibited.

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1           "(e) The pay level for each employee will be set by the  
2     appointing authority according to criteria established by the Office  
3     of Personnel Management.

4     "Sec. 3392. Career appointments to the Senior Executive Service

5           "(a) Career recruitment may —

6                 "(1) include all current Federal employees; or

7                 "(2) be open to Federal employees and persons outside of  
8     Government.

9           "(b) The recruitment process shall attempt to reach all groups  
10    of qualified applicants, including women and minorities.

11          "(c) Competitive staffing shall be conducted by an agency  
12    executive resources board and the staffing process shall meet  
13    requirements established by the Office of Personnel Management.

14          "(d) The Office of Personnel Management may appoint members of  
15    Qualifications Review Boards from within and outside the Federal  
16    service to certify the managerial qualifications of candidates for  
17    entry into the Senior Executive Service, according to regulations  
18    promulgated by the Office of Personnel Management. The Office of  
19    Personnel Management, working with the various Review Boards, shall  
20    set the criteria for establishing managerial qualifications for  
21    appointment to the Senior Executive Service. Such criteria shall  
22    include:

23                 "(1) Demonstrated performance in managerial work;

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1           "(2) Successful participation in a centrally sponsored or  
2           agency career executive development program approved by the  
3           Office of Personnel Management; or

4           "(3) Unique or special individual qualities predictive of  
5           success in managerial work to apply in those exceptional cases  
6           wherein an outstanding candidate would otherwise be excluded from  
7           appointment.

8           "(e) Employees with career status from other Government  
9           personnel systems shall have their managerial qualifications approved  
10          by the Office of Personnel Management for a career appointment.

11          "(f) Employees entering the Senior Executive Service under  
12          career appointments will serve a one year probationary period.

13          "Sec. 3393. Noncareer appointments to the Senior Executive Service

14          "(a) Noncareer recruitment and appointment may be made by the  
15          appointing authority without managerial qualifications approval by the  
16          Office of Personnel Management.

17          "(b) The employee given a noncareer appointment may be removed  
18          by the appointing authority.

19          "(c) Employees given noncareer appointments do not acquire  
20          credit toward career status.

21          "(d) Noncareer appointments cannot be made to career reserved  
22          positions as defined in section 3132(b)(4) of this title.

23          "Sec. 3394. Limited appointments to the Senior Executive Service

24          "(a) Limited emergency appointments to the Senior Executive  
25          Service --

1           "(1) may only be made when filling new positions established  
2           under a bona fide emergency as defined in the regulations of the  
3           Office of Personnel Management;

4           "(2) may not exceed 18 months and are not renewable; and

5           "(3) may be filled by the agency without regard to the  
6           competitive merit staffing process.

7           "(b) Limited term appointments --

8           "(1) may only be made for positions the duties of which will  
9           expire in three years or less;

10          "(2) are not renewable; and

11          "(3) may be filled by the agency without regard to the  
12          competitive merit staffing process.

13          "(c) A Senior Executive Service employee does not acquire credit  
14          toward career status under limited appointment.

15          "(d) The Office of Personnel Management shall approve use of  
16          limited appointment authority before an appointment under this  
17          authority may be made.

18          "Sec. 3395. Placement and transfer within the Senior Executive Service

19          "(a) An executive with a career appointment --

20                "(1) may be reassigned to a Senior Executive Service  
21                position in the same agency;

22                "(2) may transfer to a Senior Executive Service position in  
23                another agency; and

24                "(3) may request assignment outside the Senior Executive  
25                Service.

1           "(b) An executive with a limited appointment --

2                 "(1) may be reassigned to another Senior Executive Service  
3           position which meets the criteria under which the executive was  
4           appointed, except that continuous service in any one agency under  
5           a limited emergency appointment may not exceed 18 months and  
6           under a limited term appointment may not exceed three years;

7                 "(2) may not be given a career appointment in the Senior  
8           Executive Service except under the competitive merit staffing  
9           process; and

10                "(3) may not be given another limited appointment in the  
11           same agency after completing the maximum period of service  
12           authorized for the employee's original appointment, within one  
13           calendar year of the expiration of the limited appointment.

14           "(c) An executive with a noncareer appointment --

15                 "(1) may be reassigned to any general Senior Executive  
16           Service position in the same agency;

17                 "(2) may transfer to a general Senior Executive Service  
18           position in another agency;

19                 "(3) may be appointed to a noncareer position outside the  
20           Senior Executive Service; and

21                 "(4) may not be given a career appointment except under the  
22           merit staffing process.

23           "(d) A career executive may not be involuntarily reassigned or  
24           transferred within 120 days after the appointment of an agency head.

25



1 "Sec. 3396. Development for and within the Senior Executive Service  
2 "(a) The Office of Personnel Management shall establish programs  
3 for the systematic development of candidates for the Senior Executive  
4 Service or require the establishment of such programs by agencies  
5 which meet criteria prescribed by the Office of Personnel Management.

6 "(b) The Office of Personnel Management shall establish programs  
7 for the continuing development of executives or require the  
8 establishment of such programs by agencies which meet criteria  
9 prescribed by the Office of Personnel Management.

10 "(c) The Office of Personnel Management will assist agencies in  
11 the establishment of programs required under subsections (a) and (b)  
12 of this section and will monitor the implementation of such programs.  
13 The Office of Personnel Management shall direct agencies to take  
14 corrective action when required.

15 "(d) It shall be the duty of the Office of Personnel Management  
16 to encourage and assist individuals to improve their skills and  
17 increase their contribution by service in a variety of agencies as  
18 well as by accepting placements in State or local governments or in  
19 the private sector.

20 "(e) An agency head may grant administrative leave to a career  
21 executive for a sabbatical period not exceeding eleven months to  
22 permit such person to engage in study or uncompensated work experience  
23 which will contribute to the individual's development and  
24 effectiveness. The agency head may authorize travel and per diem  
25 costs where essential to the developmental period. A sabbatical may  
not be granted more than once in a ten year period.

1 "Sec. 3397. Regulations

2 "The Office of Personnel Management shall prescribe regulations  
3 necessary to carry out the purpose of this subchapter."

4 Sec. 404. Retention Preference.

5 Chapter 35 of title 5, United States Code is amended --

6 (1) by inserting the following in the chapter analysis after  
7 subchapter IV:

8 "SUBCHAPTER V -- REMOVAL, REINSTATEMENT AND GUARANTEED  
9 PLACEMENT PROVISIONS IN THE SENIOR EXECUTIVE SERVICE

10 "Sec.

11 "3591. Removal from the Senior Executive Service.

12 "3592. Reinstatement in the Senior Executive Service.

13 "3593. Guaranteed placement in other personnel systems.

14 "3594. Regulations.";

15 (2) by adding the following at the end of subsection (b) in  
16 section 3501:

17 "This subchapter does not apply to employees in the Senior  
18 Executive Service established in section 3131 of this title."; and

19 (3) by adding the following after subchapter IV:

20 "SUBCHAPTER V -- REMOVAL, REINSTATEMENT AND GUARANTEED  
21 PLACEMENT PROVISIONS IN THE SENIOR EXECUTIVE SERVICE

22 "Sec. 3591. Removal from the Senior Executive Service

23 "(a) Career appointees may be removed from the Senior Executive  
24 Service --

25 "(1) during the one year period of probation in the Senior  
Executive Service;

1           "(2) for less than fully successful managerial performance  
2           appraisals determined under the provisions of subchapter II,  
3           chapter 43 of this title; or

4           "(3) for misconduct, neglect of duty, or malfeasance.

5           "(b) Limited emergency appointees may be removed at any time  
6           from the Federal service by the appointing authority and shall be  
7           separated after 18 months.

8           "(c) Limited term appointees may be removed at any time from the  
9           Federal service by the appointing authority before the expiration of  
10          that period and shall be separated after three years.

11          "(d) Noncareer employees can be removed at any time from the  
12          Federal service by the appointing authority.

13          "Sec. 3592. Reinstatement in the Senior Executive Service

14          "A former Senior Executive Service employee with career status  
15          may be reinstated to any Senior Executive Service position if --

16                 "(1) the individual has successfully completed the  
17                 probationary period in the Senior Executive Service; and

18                 "(2) the removal from the Senior Executive Service was not  
19                 for misconduct, neglect of duty, malfeasance, or less than fully  
20                 successful performance.

21          "Sec. 3593. Guaranteed placement in other personnel systems

22                 "(a) Career appointees who are appointed from a career or career-  
23                 type position within the civil service as determined by the Office of  
24                 Personnel Management and who are removed for reasons other than  
25                 misconduct, neglect of duty, or malfeasance from the Senior Executive  
               Service during Senior Executive Service probation shall have the right

1 to placement in a Federal position outside the Senior Executive  
2 Service.

3 "(b) Career appointees who are removed from the Senior Executive  
4 Service for less than fully successful performance shall have the  
5 right to placement in a Federal position outside the Senior Executive  
6 Service.

7 "(c) Career appointees in the Senior Executive Service who accept  
8 Presidential appointments outside the Senior Executive Service and who  
9 are removed from these appointments for reasons other than misconduct,  
10 neglect of duty, or malfeasance shall have the right to placement in  
11 the Senior Executive Service if the appointee applies within 90 days  
12 after the separation from the Presidential appointment.

13 "(d) Under subsection (a) and (b) of this section, placement  
14 shall be in a continuing career position at either the salary held  
15 prior to Senior Executive Service appointment or a salary which is  
16 equal to the last Senior Executive Service base pay, whichever is  
17 higher. Placement shall not cause the separation or reduction in grade  
18 of any other employee in the agency.

19 "(e) Career appointees removed from the Senior Executive Service  
20 whose base pay exceeds the top pay rate for the position into which  
21 they are placed shall retain their pay. If there are comparability  
22 increases under section 5305 of this title, these employees will  
23 receive half of each comparability increase until their pay equals the  
24 top rate payable for their position.

25 "Sec. 3594. Regulations

"The Office of Personnel Management shall prescribe regulations  
necessary for the administration of this subchapter."

1           Sec. 405. Performance Rating.

2           Chapter 43 of title 5, United States Code is amended --

3           (1) by inserting at the end of the chapter analysis:

4           "SUBCHAPTER II -- PERFORMANCE APPRAISAL IN THE

5                           SENIOR EXECUTIVE SERVICE

6       "Sec.

7       "4311. Senior Executive Service performance appraisal systems.

8       "4312. Criteria for performance appraisals.

9       "4313. Ratings for managerial performance appraisal.

10       "4314. Regulations."; and

11           (2) by inserting the following at the end of Chapter 43:

12           "SUBCHAPTER II -- PERFORMANCE APPRAISAL IN THE

13                           SENIOR EXECUTIVE SERVICE

14       "Sec. 4311. Senior Executive Service performance appraisal systems

15           "(a) Each agency, as defined by section 3132(a) of this title

16       shall, in accordance with standards established by the Office of

17       Personnel Management, develop one or more performance appraisal

18       systems designed to --

19           "(1) provide for systematic appraisals of job performance of

20       individuals in the Senior Executive Service established by

21       section 3131 of this title;

22           "(2) encourage excellence in performance for individuals in

23       the Senior Executive Service; and

24

25

1           "(3) link the performance of each individual in the Senior  
2           Executive Service with eligibility for retention and performance  
3           awards.

4           "(b) Each performance appraisal system for individuals in the  
5           Senior Executive Service shall provide --

6           "(1) that performance requirements for each individual be  
7           established at the beginning of the rating period and  
8           communicated to the employee;

9           "(2) for written appraisals of performance based on the  
10          accomplishment of the previously established personal and  
11          organizational requirements; and

12          "(3) that each individual be shown his/her appraisal and  
13          rating and be given an opportunity to respond in writing and have  
14          the rating reviewed by a higher managerial level in the agency.

15          "(c) Upon determination by the Office of Personnel Management  
16          that an agency performance appraisal system does not meet the  
17          requirements of this subchapter and the regulations prescribed  
18          thereunder, the Office of Personnel Management shall order corrective  
19          action.

20          "Sec. 4312. Criteria for performance appraisals

21                 "Managerial success in the Senior Executive Service will take  
22          into account both individual performance and organizational  
23          accomplishment.

24          "Sec. 4313. Ratings for managerial performance appraisal

25                 "(a) Each performance appraisal system shall provide for annual

1 summary ratings representing a number of levels of performance  
2 including one or more fully successful levels, an unsatisfactory level  
3 and a level of performance which is minimally satisfactory but not  
4 acceptable as a continuing level of performance.

5 "(b) The head of each agency shall establish a system to  
6 appraise the performance of members of the Senior Executive Service.  
7 The system shall provide that the appraisal will --

8 "(1) take place at least annually on a fixed schedule,  
9 except that no evaluation can be made of a career employee within  
10 120 days after the beginning of a new administration;

11 "(2) not be appealable; and

12 "(3) have the following results:

13 "(A) employees receiving ratings at any of the fully  
14 successful levels may be given performance awards as  
15 prescribed in section 5396 of this title;

16 "(B) an unsatisfactory rating requires corrective  
17 action by removal of the employee from the current position  
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1 through reassignment, transfer, or separation from the  
2 Senior Executive Service. Employees who receive two  
3 unsatisfactory annual ratings in five consecutive years shall  
4 be separated from the Senior Executive Service.

5 "(C) employees who twice in any 3-year period receive  
6 an annual rating reflecting a level of performance which is  
7 minimally satisfactory but not acceptable as a continuing  
8 level of performance shall be separated from the Senior  
9 Executive Service according to the provisions in section  
10 3591 of this title and the regulations of the Office of  
11 Personnel Management.

12 "Sec. 4314. Regulations

13 "The Office of Personnel Management may prescribe regulations  
14 necessary for the administration of this subchapter."

15 Sec. 406. Incentive Awards and Ranks.

16 Chapter 45 of title 5, United States Code is amended by adding  
17 the following after section 4506:

18 "Sec. 4507. Incentive Awards and Ranks in the Senior Executive  
19 Service

20 "(a) Each agency shall forward annually its recommendation to  
21 the Office of Personnel Management of career executives in the Senior  
22 Executive Service for ranks to be conferred on active duty senior  
23 executives. The Office of Personnel Management shall review the  
24 recommendations and recommend to the President appointments to ranks  
25 as set forth in subsection (b) of this section. The President shall



1 commission persons conferring a rank of (1) Meritorious Executive for  
2 sustained excellence or (2) Distinguished Executive for sustained  
3 extraordinary accomplishment.

4 "(b) No more than 5 percent of the members of the Senior  
5 Executive Service may be appointed to the rank of Meritorious  
6 Executive in a calendar year. No more than 15 percent of the active  
7 duty members of the Senior Executive Service may hold the rank of  
8 Meritorious Executive.

9 "(c) No more than 1 percent of the active duty members of the  
10 Senior Executive Service may hold the rank of Distinguished  
11 Executive.

12 "(d) Receipt of a meritorious rank shall entitle the individual  
13 to an annual award of \$2,500 for a period of five years of active  
14 service in the Senior Executive Service.

15 "(e) Distinguished Executives shall receive an annual award of  
16 \$5,000 for a period of five years of active service in the Senior  
17 Executive Service.

18 "(f) An employee in the Senior Executive Service appointed by  
19 the President to another position outside the Senior Executive  
20 Service shall be entitled to continue to receive any incentive award  
21 granted for service prior to the Presidential appointment.

22 "(g) Funds for awards may be appropriated to and paid by the  
23 Office of Personnel Management."

24  
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1           Sec. 407. Pay Rates and Systems.

2           Chapter 53 of title 5, United States Code is amended --

3                 (1) by amending section 5308 to read as follows:

4                 "Pay may not be paid, by reasons of any provision of this  
5                 subchapter, at a rate in excess of the rate of basic pay for  
6                 Level V of the Executive Schedule, except that executives in the  
7                 Senior Executive Service may be paid up to a rate of basic pay  
8                 equal to 96 percent of the rate provided for Executive Level  
9                 III.";

10                (2) by adding the following new subchapter at the end  
11                thereof:

12                "SUBCHAPTER X -- PAY FOR THE SENIOR EXECUTIVE SERVICE

13                "Sec. 5394. Purpose, definitions

14                "(a) It is the purpose of this subchapter to provide a pay system  
15                for the Senior Executive Service, established under subchapter II of  
16                chapter 31 of this title, that shall facilitate the accomplishment of  
17                the goals of that service, as set forth in section 3131 of this title.

18                "(b) For the purpose of this subchapter, 'agency', 'Senior  
19                Executive Service position' and 'executive' have the meanings given  
20                them by section 3132 of this title.

21                "Sec. 5395. Establishment and adjustment of rates of pay for the  
22                Senior Executive Service

23                "(a) There shall be five or more rates of basic pay for the  
24                Senior Executive Service, and the incumbent of each position shall be  
25                paid at one of these rates. These rates of basic pay shall be  
                  initially established and thereafter adjusted by the President in

1 accordance with the provisions of this section.

2       "(b) In setting rates of basic pay, the lowest rate for the  
3 Senior Executive Service shall not be less than the rate for the sixth  
4 step of GS-15 and the highest rate shall not exceed 96 percent of the  
5 rate of level III of the Executive Schedule.

6       "(c) The rates of basic pay for the Senior Executive Service  
7 shall be adjusted by the President at the same time he adjusts the  
8 rates of pay of the national compensation systems under section 5305  
9 of this title, and the adjusted rates of basic pay for the Senior  
10 Executive Service shall be included in the report transmitted to the  
11 Congress by the President under section 5305(a)(3) or (c)(1) of this  
12 title.

13       "(d) The rates of basic pay that are established and adjusted  
14 under this section shall be printed in the Federal Register and shall  
15 supersede any prior rates of basic pay for the Senior Executive  
16 Service.

17       "(e) The sum total of all monies paid to an executive for any  
18 calendar year under sections 4507, 5395, and 5396 of this title shall  
19 not exceed 95 percent of the rate provided for Executive Schedule II.

20 "Sec. 5396. Performance awards for the Senior Executive Service

21       "(a) To encourage excellence in performance by executives under  
22 the Senior Executive Service, performance awards shall be paid to  
23 executives in accordance with the provisions of this section, and  
24 shall be in addition to the rate of basic pay paid under section 5395  
25 of this title and shall not be subject to the limit placed on salaries

1 under section 5308. It shall be the responsibility of each agency  
2 head to see that the provisions of this section are administered in  
3 the agency in such a way that excellence is encouraged in the  
4 performance of the agency's executives.

5 "(b) Each executive shall annually be eligible to receive a  
6 performance award subject to the following criteria:

7 "(1) no performance award is to be paid to an executive  
8 whose performance was determined to be less than fully successful  
9 at the time of the executive's most recent performance evaluation  
10 under subchapter II of chapter 43 of this title;

11 "(2) a performance award of an amount to be determined by  
12 the agency head but not more than 20 percent of the executive's  
13 rate of basic pay; and

14 "(3) performance awards may not be paid in any fiscal year  
15 to more than 70 percent of the executives in an agency which  
16 employs 3 or more members of the Senior Executive Service.

17 "(c) A performance award under this section shall be paid in a  
18 lump sum not subject to retirement or life insurance deductions. As  
19 provided in section 8339 of this title, for each year for which a  
20 performance award is received a 2 1/2 percent annuity calculation will  
21 be used in lieu of any lower percentage.

22 "Sec. 5397. Regulations

23 "Subject to such policies and procedures as the President may  
24 prescribe, the Office of Personnel Management shall issue regulations  
25 necessary for the administration of this subchapter."; and

1 (3) by adding at the end of the analysis of chapter 53 the  
2 following new items:

3 "SUBCHAPTER X — PAY FOR THE SENIOR EXECUTIVE SERVICE

4 "Sec.

5 "5394. Purpose; definitions.

6 "5395. Establishment and adjustment of rates of pay for the Senior  
7 Executive Service.

8 "5396. Performance awards for the Senior Executive Service.

9 "5397. Regulations."

10 Sec. 408. Pay Administration.

11 Chapter 55 of title 5, United States Code is amended --

12 (1) by inserting "other than an employee or individual  
13 excluded by section 5541(2)(xvi) of this section" immediately  
14 before the period at the end of section 5504(a)(B);

15 (2) by amending section 5541(2) by striking out "or" after  
16 paragraph (xiv), by striking out the period after (xv) and  
17 inserting ";or" in lieu thereof, and by adding the following  
18 paragraph:

19 "(xvi) executive managers occupying Senior Executive Service  
20 positions under the Senior Executive Service established under  
21 subchapter II of chapter 31 of this title."; and

22 (3) by striking out in Section 5595(a)(2)(i):

23 "or is in excess of the maximum rate for GS-18".

24 Sec. 409. Travel, Transportation, and Subsistence.

25 Chapter 57 of title 5, United States Code is amended --

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1 (1) In section 5723(a)(1) by striking out ";and" and adding  
2 in lieu thereof "or of a new member of the Senior Executive  
3 Service; and";

4 (2) by adding to subchapter IV the following section:  
5 "Sec. 5752. Travel expenses of Senior Executive Service candidates  
6 "Employing agencies may pay candidates for Senior Executive  
7 Service positions travel expenses incurred incident to preemployment  
8 interviews requested by the employing agency."; and

9 (3) by adding to the analysis of subchapter IV the following  
10 new item:

11 "5752. Travel expenses of Senior Executive Service candidates."  
12 Sec. 410. Leave.

13 Chapter 63 of title 5, United States Code is amended by inserting  
14 in subsection (a) of section 6304 "(e), and (f)" in lieu of "and (e),"  
15 and by adding at the end of the section the following new subsection:

16 "(f) Annual leave accrued by an individual serving in a position  
17 under the Senior Executive Service established under subchapter II of  
18 chapter 31 of this title shall not be subject to the limitation on  
19 accumulation otherwise imposed by this section."

20 Sec. 411. Adverse Actions.

21 Chapter 75 is amended --

22 (1) by inserting the following in the chapter analysis after  
23 subchapter IV:

24

25

1 "SUBCHAPTER V -- SENIOR EXECUTIVE SERVICE

2 "Sec.

3 "7541. Definitions.

4 "7542. Actions covered.

5 "7543. Cause and procedure."; and

6 (2) by adding the following after subchapter IV:

7 "SUBCHAPTER V -- SENIOR EXECUTIVE SERVICE

8 "Sec. 7541. Definitions

9 "For the purpose of this subchapter --

10 "(1) 'employee' means an individual in the Senior Executive  
11 Service established under section-3131 of this title who --

12 "(A) has completed a year of current continuous service  
13 in the Senior Executive Service; or

14 "(B) when appointed to a position in the Senior  
15 Executive Service was covered by the provisions of  
16 subchapter II of this chapter;

17 "(2) 'disciplinary action' means an action based on the  
18 conduct of the employee including, but not limited to, misconduct,  
19 neglect of duty, or malfeasance, and not including less than  
20 fully successful performance, and which results in involuntary  
21 removal or suspension for more than 30 days of the employee;

22 "(3) 'removal' means separation from the Federal service;

23 "(4) 'suspension' means the placing of an employee in a  
24 temporary nonduty nonpay status for disciplinary reasons.

25

1 "Sec. 7542. Actions covered

2 "This subchapter applies to a disciplinary removal or suspension  
3 for more than 30 days, but does not apply to a suspension or removal  
4 under section 7532 of this title.

5 "Sec. 7543. Cause and procedure

6 "(a) Under regulations prescribed by the Office of Personnel  
7 Management, an agency may take disciplinary action against an employee  
8 only for such cause as shall promote the efficiency of the service.  
9 Removal from the Senior Executive Service for less than fully  
10 successful performance is not a disciplinary action within the meaning  
11 of this provision.

12 "(b) An employee against whom a disciplinary action is proposed  
13 is entitled to --

14 "(1) at least 30 days advance written notice, except when  
15 there is reasonable cause to believe that the employee is guilty  
16 of a crime for which a sentence of imprisonment can be imposed,  
17 stating any and all reasons, specifically and in detail, for the  
18 proposed action;

19 "(2) a reasonable time to answer orally and in writing and  
20 to furnish affidavits and other documentary evidence in support  
21 of the answer;

22 "(3) be accompanied by a representative; and

23 "(4) a written decision and reasons therefor at the earliest  
24 practicable date.

25 "(c) A hearing is not required but an agency may by appropriate  
regulation provide for one.



1       "(d) Copies of the notice of proposed action, the answer of the  
2 employee when written and a summary thereof when made orally, the  
3 notice of decision and reasons therefor, and any order effecting a  
4 disciplinary action shall be made a part of records of the agency and,  
5 on request, shall be furnished to the Merit Systems Protection Board  
6 or the Office of Personnel Management."

7       "(e) An employee in the Senior Executive Service, against whom  
8 an adverse action as defined in section 7541(2) of this title is  
9 taken, is entitled to appeal to the Merit Systems Protection Board  
10 under section 7701 of this title.

11       Sec. 412. Retirement.

12       Chapter 83 of title 5, United States Code is amended:

13       (a) by redesignating subsection (h) of section 8336 of  
14 subchapter III as subsection (i) and inserting immediately after  
15 subsection (g) the following new subsection:

16       "(h) An executive in the Senior Executive Service is entitled to  
17 an immediate annuity if he/she is separated from the Senior Executive  
18 Service for less than fully successful performance and has completed  
19 25 years of Federal service or has become 50 years of age and  
20 completed 20 years of Federal service."; and

21       (b) by adding at the end of section 8339 the following new  
22 subsection:

23       "(n) The annuity of a member or former member of the Senior  
24 Executive Service established by subchapter II of Chapter 31 of this  
25 title, retiring under this subchapter, is computed under subsection

1 (a) of this section, except if the employee has received one or more  
2 annual performance awards as a member of the Senior Executive Service  
3 his/her annuity is computed by multiplying 2 1/2 percent of average  
4 pay, in lieu of any lesser percent, by the number of full years of  
5 service for which an award is received."

6 Sec. 413. Conversion to the Senior Executive Service.

7 (a) During the period following enactment and prior to the  
8 effective date of this title, each agency under the guidance and  
9 review of the Office of Personnel Management and the definitions in  
10 chapter 31 of title 5 as amended by this title, shall designate those  
11 positions which are to be incorporated into the Senior Executive  
12 Service and shall designate those positions which are career reserved.

13 (b) Each agency shall also submit a request for total Senior  
14 Executive Service space allocations and for the number of noncareer  
15 appointments needed. The Office of Personnel Management shall  
16 establish interim authorizations within the limits defined in sections  
17 3133 and 3134 of title 5, United States Code, as amended by this Act.

18 (c) Each employee serving in a position at the time it is  
19 officially designated as a position in the Senior Executive Service  
20 shall have the option to --

21 (1) remain in the current appointment and pay system,  
22 retaining all the associated benefits and provisions; or

23 (2) convert to a Senior Executive Service appointment  
24 according to the automatic appointment conversion provisions of  
25 subsections (d), (e), (f), (g), and (h) of this section. The

1 employee shall be notified in writing that his position has been  
2 brought into the Senior Executive Service and what his/her  
3 options are as defined in subsections (d), (e), (f), (g),  
4 and (h) of this section. The employee shall be given 90 days  
5 from the date of this notification to elect one of these options.

6 (d) Each employee who has elected an automatic appointment  
7 conversion, is serving immediately before the effective date in a  
8 position designated as a Senior Executive Service position, and is  
9 currently under --

- 10 (1) a career or career-conditional appointment; or  
11 (2) a similar type of appointment in an excepted service as  
12 determined by the Office of Personnel Management;

13 shall receive a career appointment to that position in the Senior  
14 Executive Service, not subject to section 3392(f) of this title.

15 (e) Each employee who has elected an automatic appointment  
16 conversion and is currently under an excepted appointment in a  
17 position which is not designated a career reserved position in the  
18 Senior Executive Service, but is --

- 19 (1) a position in Schedule C of subpart C of part 213 of  
20 title 5, Code of Federal Regulations;

- 21 (2) a position filled by noncareer executive assignment  
22 under subpart F of part 305 of title 5, Code of Federal  
23 Regulations; or

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1           (3) a position in the Executive Schedule under subchapter II  
2           of chapter 53 of title 5, United States Code, except career  
3           Executive Schedule positions;  
4           shall receive a noncareer appointment in the Senior Executive Service.

5           (f) Each employee described in subsection (e) of this section  
6           who is serving immediately before the effective date in a position  
7           designated as a Senior Executive Service career reserved position  
8           shall be reassigned to an appropriate Senior Executive Service general  
9           position or terminated.

10          (g) Each employee described in subsection (e) of this section  
11          who is serving immediately before the effective date, in a position  
12          designated as a Senior Executive Service position and who has  
13          reinstatement eligibility to a position in the competitive service,  
14          may request the reinstatement of his/her career status from the Office  
15          of Personnel Management and be converted to a career appointment in  
16          the Senior Executive Service. The names and grounds for status of all  
17          such employees who are so reinstated and converted shall be published  
18          in the Federal Register.

19          (h) Each employee who has elected an automatic appointment  
20          conversion and is under a limited executive assignment under subpart F  
21          of part 305 of title 5, Code of Federal Regulations shall --

22                 (1) be converted to a Senior Executive Service limited term  
23                 appointment if the position encumbered immediately before the  
24                 effective date will terminate within three years of the effective  
25                 date;

1           (2) be converted to a Senior Executive Service noncareer  
2           appointment if the position encumbered immediately before the  
3           effective date is designated as a Senior Executive Service  
4           general position;

5           (3) be converted to a Senior Executive Service noncareer  
6           appointment and reassigned to a Senior Executive Service general  
7           position if the encumbered position immediately before the  
8           effective date is designated as a Senior Executive Service career  
9           reserved position.

10          (i) Employees whose actual base pay at the time of conversion  
11          exceeds the pay of the rate to which they are converted shall retain  
12          their pay. If there are comparability increases under section 5305 of  
13          this title, these employees will receive half of each comparability  
14          increase until the base pay equals the established Senior Executive  
15          Service rate.

16          (j) The Office of Personnel Management shall prescribe  
17          regulations to carry out the purpose of this section. The regulations  
18          shall provide a right of appeal to the Merit Systems Protection Board  
19          for an employee who believes his/her employing agency has violated  
20          his/her rights under this section. An agency shall take the  
21          corrective action that the Merit Systems Protection Board orders in  
22          its decision on an appeal under this subsection.

23          Sec. 414. Repealer.

24          All authority in effect immediately before the effective date of  
25          this section for the establishment or the pay, or both, as the case

1     may be, of each position subject to section 401 of this Act is  
2     repealed.

3             Sec. 415. Savings Provision.

4             The enactment of this title does not decrease the present pay,  
5     allowances, or compensation, or future annuity of any person.

6             Sec. 416. Effective Date.

7             The provisions of this title shall take effect nine months after  
8     the enactment of the title with the exception of section 413,  
9     regarding conversion procedures, which shall take effect immediately  
10    upon enactment.

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TITLE V PAY FOR PERFORMANCE

1           Sec. 501. Pay For Performance Amendments

2           Chapter 53 of title 5 United States Code is amended by adding the  
3 following subchapter:

4                               "SUBCHAPTER VII--MERIT PAY

5       "Sec. 5371. Policy

6           It is the policy of Congress that the merit pay plan shall, within  
7 available funds:

8           . "(a) recognize and reward quality performance by varying merit pay  
9 adjustments;

10           "(b) utilize performance appraisals as the basis for eligibility  
11 for merit pay;

12           "(c) provide for training to improve objectivity and fairness in  
13 the evaluation of performance; and

14           "(d) regulate the costs of merit pay by establishing a merit pay  
15 budget and other control techniques.

16       "Sec. 5372. Merit Pay Plan

17           "(a) In accordance with the principles contained in section 5371 of  
18 this title, the Office of Personnel Management shall establish a merit  
19 pay plan which shall cover any employee who occupies a position as a  
20 manager or supervisor in grades 9 through 15 of the General Schedule or  
21 a non-managerial position in grades 16 through 18 of the General Schedule.

22           "(b) The merit pay plan shall include a range of basic pay for each  
23 grade to which it applies consisting of the minimum and maximum of each  
24 grade as specified in section 5332(a) of this title.

25           "(c) Concurrent with each adjustment under section 5305 of this title,

1 the Office of Personnel Management shall determine the extent to which  
2 such adjustment shall be granted automatically to all employees covered  
3 by the merit pay plan.

4 Funding for that portion of the merit pay plan which permits increases  
5 to base pay shall be determined annually by the Office of Personnel  
6 Management. It shall consist of funds available as a result of any  
7 portion of the adjustment granted under section 5305 of this title not  
8 being granted automatically as provided under subsection (c) of this  
9 section, plus an additional amount which takes into consideration the  
10 level of expenditure for within-grade increases and quality step  
11 increases for other employees in the General Schedule who are not  
12 covered by this plan.

13 "(d) An automatic increase in pay under this section is not an  
14 equivalent increase in pay within the meaning of section 5335 of this  
15 title.

16 "(e) No employee may be paid less than the minimum of his or her  
17 assigned grade.

18 "(f) An employee covered by this subchapter shall be advanced within  
19 the pay range of his or her grade in accordance with regulations pre-  
20 scribed by the Office of Personnel Management.

21 "(g) The head of an agency may pay a cash award to, and incur necessary  
22 expense for the honorary recognition of, an employee who--

23 "(1) by his/her suggestion, invention, superior accomplishment,  
24 or other improvement of Government operations; or

25 "(2) performs a special act or service in the public interest



1 in connection with or related to his/her official employment.

2 "(h) The President may pay a cash award to, and incur necessary  
3 expense for the honorary recognition of, an employee who--

4 "(1) by his/her suggestion, invention, superior accomplishment,  
5 or other personal effort contributes to the efficiency, economy, or  
6 other improvement of Government operations; or

7 "(2) performs an exceptionally meritorious special act or  
8 service in the public interest in connection with or related to  
9 his/her official employment.

10 "A Presidential award may be in addition to an agency award under  
11 subsection (g) of this section.

12 "(i) A cash award under this section is in addition to the basic  
13 pay and any merit increase to basic pay of the recipient. Acceptance of  
14 a cash award under this section constitutes an agreement that the use by  
15 the Government of an idea, method, or device for which the award is made  
16 does not form the basis of a further claim of any nature against the  
17 Government by the employee, his heirs, or assigns.

18 "(j) A cash award to, and expense for the honorary recognition of,  
19 an employee may be paid from the fund or appropriation available to the  
20 activity primarily benefiting or the various activities benefiting. The  
21 head of the agency concerned determines the amount to be paid by each  
22 activity for an agency award under subsection (g) of this section. The  
23 President determines the amount to be paid by each activity for a  
24 Presidential award under subsection (h) of this section.

25 "(k) Except as provided by subsection (n) of this section, a cash

1     award under this section may not exceed \$10,000.

2             "(1) When the head of an agency certifies to the Office of Personnel  
3     Management that the suggestion, invention, superior accomplishment, or  
4     other meritorious effort for which the award is proposed is highly  
5     exceptional and unusually outstanding, a cash award in excess of \$10,000  
6     but not in excess of \$25,000 may be granted with the approval of that  
7     office.

8             "(m) An agency may pay or grant an award under this section not-  
9     withstanding the death or separation from the service of the employee  
10    concerned, if the suggestion, invention, superior accomplishment, other  
11    personal effort, or special act or service in the public interest for  
12    which the award is proposed was made or performed while the employee was  
13    in the employ of the Government.

14            "(n) Under regulations prescribed by the Office of Personnel  
15    Management, the benefit of advancement through the range of basic pay  
16    shall be preserved for an employee covered by the merit pay plan, whose  
17    continuous service is interrupted in the public interest by service with  
18    the armed forces, or by service in essential non-Government civilian  
19    employment during a period of war or national emergency.

20            "(o) Increases in basic pay granted under the merit pay plan are  
21    considered pay fixed by statute.

22    "Sec. 5373. Regulations

23            "The Office of Personnel Management shall prescribe regulations  
24    necessary for the administration of this subchapter.

25    "Sec. 502. Conforming and Technical Amendments

1       "(a) Section 4501(2)(A) is amended by striking out ", and" and  
2       inserting, in lieu thereof, "but does not include an individual paid  
3       under the merit pay plan established under section 5372 of this title; and".

4       "(b) Section 4502(a) is amended by striking out "5,000" and  
5       inserting, in lieu thereof, "10,000".

6       "(c) Section 4502(b) is amended--

7               (1) by striking out "Civil Service Commission" and inserting  
8       in lieu thereof, "Office of Personnel Management";

9               (2) by striking out "\$5,000" and inserting, in lieu thereof,  
10       "\$10,000"; and

11              (3) by striking out "the Commission" and inserting, in lieu  
12       thereof, "the Office".

13       "(d) Section 4506 is amended by striking out "Civil Service  
14       Commission may" and inserting, in lieu thereof, "Office of Personnel  
15       Management shall".

16       "(e) Section 5332(a) is amended by inserting after "applies" "except  
17       an employee covered by subchapter VII of this chapter."

18       "(f) Section 5334 is amended (1) in paragraph (2) of subsection (c)  
19       by inserting after "step" ", or for an employee appointed to a position  
20       covered by the merit pay plan, any dollar amount, "; and

21              (2) by adding at the end thereof the following subsection

22               "(g) For an employee covered by the merit pay plan all references  
23       in this section to 'two steps' or 'two step-increases' shall be deemed  
24       to mean six percent."

25       "(g) Section 5335(e) is amended by inserting after "individual"

1 "covered by subchapter VII of this title; or,"

2 "(h) Section 5336(c) is amended by inserting after "individual"

3 "covered by subchapter VII of this title; or,".

4 "(i) The analysis of chapter 53 is amended by adding the following  
5 items at the end thereof:

6 "SUBCHAPTER VII--MERIT PAY

7 "5371. Policy

8 "5372. Merit Pay

9 "5373. Regulations

10 Sec. 503. Pay Saving.

11 Any changes in pay required by the initial implementation of this  
12 title are not adverse actions as defined in chapter 75 of title 5,  
13 United States Code.

14 Sec. 504. Effective Date

15 The provisions of this title are effective on the first day of  
16 the first applicable pay period which begins on or after the ninetieth  
17 day after the date of enactment of this title.

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1 TITLE VI RESEARCH AND DEMONSTRATION AUTHORITY

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4 Sec. 601. Chapter 13 of title 5, United States Code, is amended  
5 by designating the existing chapter as "SUBCHAPTER I -- GENERAL" and  
6 by adding the following subchapter:

7 "SUBCHAPTER II -- RESEARCH AND DEMONSTRATION PROJECTS

8 "Sec. 1321. Definitions

9 "For the purposes of this subchapter --

10 "(1) 'agency' means an agency as defined in section 105 of  
11 this title;

12 "(2) 'employee' means an individual employed in or under an  
13 agency;

14 "(3) 'eligible' means an individual who has qualified for  
15 appointment in an agency and whose name has been entered on the  
16 appropriate register of eligibles or employment list;

17 "(4) 'demonstration project' means an action project  
18 conducted by the Office of Personnel Management, or under its  
19 supervision, to determine whether a specified change in personnel  
20 policies or procedures may result in improved Federal personnel  
21 administration and mission accomplishment; and

22 "(5) 'research program' means a planned study of the manner  
23 in which public management policies and systems are operating,  
24 the effects of those policies and systems, the possibilities for  
25 change, and comparisons among policies and systems.

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1 "Sec. 1322. Research support functions  
2 "The Office of Personnel Management is authorized and directed  
3 to --  
4 "(1) initiate and support research programs;  
5 "(2) foster and support the development and use of new and  
6 improved methods and technologies;  
7 "(3) evaluate the status and need for new, additional, or  
8 continuing research as required by agency needs or as evidenced  
9 by programs, projects and studies being undertaken by agencies;  
10 "(4) foster, support, and cooperate in public management  
11 research and demonstration projects being conducted by Federal  
12 agencies, State and local governments, private sector  
13 organizations, educational institutions, and public interest  
14 organizations concerned with improving and strengthening the  
15 public service;  
16 "(5) maintain a central clearinghouse for the collection of  
17 public management research information, encourage and facilitate  
18 information interchange among governmental agencies, educational  
19 institutions, and public interest groups, and disseminate  
20 research information to public or private agencies or  
21 organizations;  
22 "(6) encourage the application of research findings to the  
23 solution of public management problems; and  
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1           "(7) carry out these research support functions either  
2           directly or through agreement or contract with other public and  
3           private organizations.

4   "Sec. 1323. Demonstration projects

5           "(a) Subject to the provisions and limitations contained in  
6   this section, the Office of Personnel Management is authorized to  
7   conduct, or enter into agreements or contracts with one or more Federal  
8   agencies and other public and private organizations to conduct and  
9   evaluate demonstration projects. The conduct of demonstration projects  
10   shall not be limited by any lack of specific authority to take the  
11   action contemplated, or by any provision or provisions of law existing  
12   at the time inconsistent with such action, including laws or  
13   regulations relating to --

14           "(1) the methods of establishing qualification requirements  
15   for, recruitment for, and appointment to positions;

16           "(2) the methods of classifying positions and compensating  
17   employees, except that no variation is hereby authorized in  
18   employee benefits provided by chapter 63 or by Part III, Subpart G  
19   of this title;

20           "(3) the methods of assigning, reassigning, or promoting  
21   employees;

22           "(4) the methods of disciplining employees;

23           "(5) the methods of providing incentives to employees,  
24   including the provision of group or individual incentive bonuses  
25   or pay;

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- 1           "(6) hours of work;
- 2           "(7) the methods of involving employees, unions, and
- 3           employee organizations in personnel decisions; and
- 4           "(8) the methods of reducing overall agency staff and grade
- 5           levels.
- 6           "(b) Prior to conducting or sponsoring a demonstration project,
- 7           the Office of Personnel Management shall --
- 8           "(1) develop a project plan which identifies --
- 9           "(A) the purpose or purposes of the project;
- 10           "(B) the categories of employees, eligibles, or
- 11           applicants; or the occupational series, grades, or
- 12           organizational unit of employees covered by the project;
- 13           "(C) the numbers of employees or eligibles to be
- 14           included in the project;
- 15           "(D) the methodology for the project;
- 16           "(E) the duration of the project;
- 17           "(F) the training to be provided in connection with
- 18           the project;
- 19           "(G) the anticipated costs of the project; and
- 20           "(H) the methodology and criteria for evaluation of the
- 21           project; and
- 22           "(2) have the proposed project plan --
- 23           "(A) published in the Federal Register;
- 24           "(B) considered in public hearing; and
- 25           "(C) approved by the participating agency or agencies.



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1       "(c) A demonstration project shall not --

2               "(1) include more than 5,000 employees or eligibles  
3       exclusive of such control group members as are necessary to  
4       validate the results of the project; nor

5               "(2) extend more than five years from the date of approval  
6       by the Office of Personnel Management except for such follow up  
7       research as is necessary to validate the results of the project.

8       "(d) Subject to the terms of any written agreement between the  
9       Office of Personnel Management and an agency, a demonstration project  
10      may be terminated by the Office of Personnel Management, or the agency,  
11      if either determines that the project creates a substantial hardship  
12      or is not in the best interest of the public, the Government,  
13      employees, or eligibles.

14       "(e) Employees within a unit with respect to which an  
15      organization of Government employees has been accorded exclusive  
16      recognition shall not be included within any project under subsection  
17      (b) if such project would violate a negotiated agreement unless there  
18      is written agreement with the organization, or if the matter is not  
19      covered by a negotiated agreement, until there has been consultation  
20      with the organization.

21       "(f) Employees within a unit with respect to which an  
22      organization of Government employees has not been accorded exclusive  
23      recognition shall not be included within any project under subsection  
24      (b) of this section except after agency consultation with these  
25      employees.

1       "(g) Evaluation of the results of the project and its impact on  
2       improving public management shall be undertaken for each project.

3       "(h) Upon the request of the Director of the Office of Personnel  
4       Management, Federal agencies shall cooperate with and assist the  
5       Office as far as practical in the performance of this function and  
6       provide the Office with requested information and reports relating to  
7       the conduct of research and demonstration projects in their respective  
8       agencies.

9       "Sec. 1324. Appropriation authorized

10       "(a) There are authorized to be appropriated such sums as may be  
11       necessary to carry out the provisions of this subchapter.

12       "(b) Funds made available to the Office of Personnel Management  
13       for this subchapter may be allocated or transferred by the Office of  
14       Personnel Management to any agency conducting demonstration projects  
15       or assisting the Office of Personnel Management in conducting projects.  
16       Funds so allocated or transferred shall remain available for such  
17       period as may be specified in the Appropriation Acts making these funds  
18       available.

19       "Sec. 1325. Reports

20       "The Office of Personnel Management shall include in the annual  
21       report required by section 1308 of this title a summary of research and  
22       demonstration projects conducted during the year, the effect of that  
23       research on improving public management and increasing efficiency, and  
24       recommendations of policies and procedures which will improve the  
25       attainment of general research objectives.

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1 "Sec. 1326. Regulations

2 "The Office of Personnel Management shall prescribe regulations  
3 for the administration of this subchapter."

4 Sec. 602. The analysis for chapter 13 of title 5, United States  
5 Code is amended by inserting immediately before the item relating to  
6 section 1301 the following item:

7 "SUBCHAPTER I -- GENERAL"

8 and adding at the end of the item relating to section 1308 the  
9 following new items:

10 "SUBCHAPTER II -- RESEARCH AND DEMONSTRATION PROJECTS

11 "Sec. 1321. Definitions.

12 "Sec. 1322. Research support functions.

13 "Sec. 1323. Demonstration projects.

14 "Sec. 1324. Appropriations authorized.

15 "Sec. 1325. Reports.

16 "Sec. 1326. Regulations."

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1 TITLE VIII MISCELLANEOUS

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4 Sec. 801. Separability.

5 If any provision of this Act or the application thereof to any  
6 person or circumstance is held invalid, neither the remainder of this  
7 Act nor the application of such provision to other persons or  
8 circumstances shall be affected thereby.

9 Sec. 802. Savings Provisions.

10 (a) Except as provisions of the Act may govern, all Executive  
11 orders, rules and regulations affecting the Federal service shall  
12 continue in effect, according to their terms, until modified,  
13 terminated, superseded, or repealed by the Office of Personnel  
14 Management or the Merit Systems Protection Board as to matters within  
15 their respective jurisdictions.

16 (b) No provision of this Act shall adversely affect any  
17 administrative proceedings pending at the time such provision takes  
18 effect. Orders shall be issued in such proceedings and appeals shall  
19 be taken therefrom as if this Act had not been enacted.

20 (c) No suit, action or other proceeding lawfully commenced by or  
21 against the Director of the Office of Personnel Management or the  
22 board members of the Merit Systems Protection Board, or any officer or  
23 employee thereof in his/her official capacity or in relation to the  
24 discharge of his/her official duties, as in effect immediately prior  
25 to the effective date of the provision of this Act applicable thereto

1 shall abate by reason of enactment of this Act. Such suits, actions,  
2 or other proceedings shall be determined under statutes, Executive  
3 orders, directives, rules, or regulations at the time of the events or  
4 events which are the basis of the cause of action.

5 Sec. 803. Authorization of Appropriations.

6 There are authorized to be appropriated, out of any monies in the  
7 Treasury not otherwise appropriated, such sums as may be necessary to  
8 carry out the provisions of this Act.

9 Sec. 804. Powers of President Unaffected Except by Express  
10 Provisions.

11 Except as expressly provided in this Act, nothing contained  
12 herein shall be construed to limit, curtail, abolish, or terminate any  
13 function of, or authority available to, the President which he had  
14 immediately before the effective date of this Act; or to limit,  
15 curtail, or terminate his authority to delegate, redelegate, or  
16 terminate any delegation of functions.

17 Sec. 805. Effective Dates.

18 Except as otherwise expressly provided in this Act, the  
19 provisions of this Act shall take effect ninety days after the date of  
20 enactment.

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SECTION ANALYSES  
TO ACCOMPANY THE INDIVIDUAL  
TITLES OF A BILL ENTITLED  
"CIVIL SERVICE REFORM ACT OF 1978"

## TITLE I MERIT SYSTEM PRINCIPLES

Title I of the bill, Merit System Principles, adds to title 5, United States Code, a chapter 2.

Section 201 provides that the merit system principles shall apply to departments and agencies in the Executive branch, the General Accounting Office, the Administrative Office of the United States Courts, the Library of Congress, the Botanic Garden, the Government Printing Office, the Office of the Architect of the Capitol and to the United States Postal Service and the Postal Rate Commission.

Section 202 enumerates the merit system principles which will be applied in administering the Federal personnel system. It sets forth the principles managers are to follow in order to improve the quality of the Federal civil service and to provide a civil service which is competent, honest and responsive. On recruiting, selecting and advancing employees, the object will be to achieve a workforce from all segments of society which implements the Government's commitment to equal employment opportunity and complies with merit requirements.

Discrimination against applicants or employees, based on political affiliation, race, color, religion, national origin, sex, marital status, age or handicapping condition, is to be fully eliminated from Federal personnel administration. Privacy and constitutional rights of applicants and employees are to be fully protected. Employees are to be compensated based on equitable considerations with appropriate incentives and recognition for excellence in performance. A competent workforce is to be assured, in which all employees maintain high standards of integrity and conduct including avoidance of conflicts of interest and responsiveness to the public interest by providing prompt and courteous service. The workforce is to be efficiently and effectively utilized, and corrective action is to be taken when needed to maintain high standards.

Employees are to be retained on the basis of the adequacy of their performance. Efforts must be made to correct inadequate performance. Employees who cannot or will not improve to meet required standards must be separated. Training will be provided to employees to improve organizational and individual performance. Finally, the principles provide that employees are to be protected from arbitrary action, personal favoritism, and partisan political coercion and that they are to be prohibited from using their official authority to interfere with or affect the result of an election or a nomination.

Section 203 gives the President broad implementation authority to effectuate the application of the merit system principles and compliance with laws which relate thereto.

Subsection 204(a) contains a definition of the term "personnel action" which includes primarily the same actions now covered for the purposes of most civil service laws, rules, and regulations, and also includes decisions concerning pay, benefits, incentive or other awards and training when the training leads to another of the enumerated personnel actions. Excluded from coverage, however, are actions relating to positions for which it is proper to consider political background, responsiveness, or sensitivity. These definitions specify the types of actions to which the prohibited practices listed in subsection (c) are applicable.

Subsection (b) provides that not only heads of agencies in the Executive branch and other Federal entities, but also individuals to whom the heads of Executive agencies delegate personnel management authority (to the extent of that delegation), will be held responsible for preventing prohibited personnel practices and for executing all applicable civil service laws, Executive orders and directives, rules, and regulations.

Subsection (c) enjoins any employee who takes, directs others to take, recommends, or approves any personnel action, or fails to take such action, either under his own authority or authority delegated to him/her from another source, from committing any of the prohibited personnel practices.

Paragraph (1) restates existing prohibitions against unlawful discrimination on the basis of political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition. These restrictions are now found among Title VII of the Civil Rights Act of 1964 (42 USC 2000-16), the Fair Labor Standards Act Amendments of 1974, the Civil Service Act of 1883 and the civil service rules and various Executive orders.

Paragraph (2) restates, and expands the current provision in 5 U.S.C. 3303 which prohibits receipt, or consideration by examining or appointing officers of recommendations by Senators and Representatives except as to character or residence of applicants for employment. Paragraph (2) adds a prohibition against soliciting such recommendation or statement, and broadens the coverage of the prohibition by including all individuals rather than limiting the restrictions to Senators and Representatives. Moreover, it excludes from coverage certain information which has validity in the appointment process.

Paragraph (3) prohibits using official authority to coerce the political action of any person; to obligate any person to contribute to any political fund, or render any political service; or to take any reprisal action against any person for refusal to do these things.



Paragraph (4) prohibits deliberate deceit or obstruction in regard to an individual's right to compete for Federal employment.

Paragraph (5) prohibits influencing an individual to withdraw from competition for the purpose of either improving or injuring the prospects of any applicant for employment.

Paragraph (6) is a further extension of paragraphs (4) and (5) prohibiting the granting of preference or unfair advantage not authorized by law to any employee or applicant for employment by defining the scope and manner of competition and the requirements of a position so as to enhance or injure the prospects of particular person.

Paragraph (7) restates the current restrictions against nepotism found in both 5 U.S.C. 3110 and 5 CFR Part 310.

Paragraph (8) provides that no reprisal action will be taken for the exercise of any appeal rights granted by law or regulation to employees, or for their lawful disclosure of information concerning violations of law or regulation (so-called "whistleblower" protection.)

Subsection (d) is an affirmation of the principle of equal employment opportunity, and a statement indicating that there is no disharmony between this principle and the protection of the merit system and makes clear that any affirmative action right or remedy available to the employee under law, Executive Order, rule or regulation is maintained as defined by the prohibited personnel practices set out above.

Section 205 gives the General Accounting Office express authority to conduct audits and reviews to assure compliance with laws, rules and regulations governing employment in Federal agencies. This provision has been placed in title 5 in recognition of Congress' interest and oversight responsibilities of the Federal personnel system and gives express authority to the General Accounting Office as Congress' agent.

## TITLE II PROTECTION OF EMPLOYEE RIGHTS

### Section 201

Section 201 substitutes the term "Merit Systems Protection Board" for the term "United States Civil Service Commission" in 5 U. S. C. 1101 and the terms "Merit Systems Protection Board Member" and "Board member" for the terms "Civil Service Commissioner" and "Commissioner" in 5 U. S. C. 1102. This section also changes the length of the Board members' terms from six to seven years; prohibits the serving of more than one full seven year term; eliminates the statutory requirement for an Executive Director; and provides that members may be removed by the President only for cause and after notice and hearing. The section substitutes the terms "Merit Systems Protection Board" and "Board member" for the terms "Civil Service Commission" and "Commissioners", repeals the subsection which provides for an Executive Director and deletes reference to an Executive Director in the catch line.

### Section 202

Under the provisions of section 202, any Board member, the Special Counsel, administrative law judge, or supervisory appeals officer designated by the Board is authorized to subpoena witnesses and documents, and to seek a court order enforcing the subpoena.

### Section 203

Section 203 provides for the appointment by the President (subject to confirmation by the Senate) of a Special Counsel for a term of seven years, subject to removal by the President only for cause, and only after notice and hearing.

### Section 204

Section 204 authorizes the Special Counsel to receive and investigate employee and citizen complaints. The Special Counsel is authorized to conduct investigations upon a preliminary showing that a personnel action was taken in reprisal for the lawful disclosure of information concerning violations of laws, Executive orders, and regulations. The Special Counsel may not disclose the identity of the complainant, without the consent of that person, except when the matter warrants full investigation and disclosure is unavoidable. In cases other than those which are appealable to the Board, the Special Counsel would be authorized to stay personnel actions (such as reassignments to different geographic areas) which could have a substantial economic impact on the employees if the status quo were not maintained during the Special Counsel's investigation. When the Special Counsel determines that such reprisal has occurred in a case not appealable to the Board, he would be authorized to report the matter to the agency head and to require appropriate

action; the agency head would be required to certify to the Special Counsel that the matter had been reviewed and that the action had been taken. Refusal to carry out the actions ordered by the Special Counsel may be a cause for the filing of disciplinary charges by the Special Counsel. The Special Counsel may file disciplinary charges against a Federal employee before the Board. The board would issue a final decision in the case which would be subject to review by the U. S. Court of Appeals for the District of Columbia. The Board would be authorized to impose disciplinary action including removal, demotion, debarment from Federal employment for up to five years, suspension, a fine of up to \$1,000.00, or a reprimand.

The Special Counsel also would be authorized to report prohibited personnel practices which require correction to the appropriate agency head and to the Office of Personnel Management, and would be authorized to provide copies of his report to the President and to the Congress. While the Special Counsel could suggest methods of correcting these practices, the final decision regarding the corrective action to be taken would be made by the agency, subject to guidance and instruction by the Office of Personnel Management. The agency could be required to certify to the Special Counsel, within 30 days after he or she receives the Special Counsel's report, that he or she has reviewed the report; the agency head also would be required to advise the Special Counsel of the nature of the corrective action to be taken and of the estimated date by which the action would be completed. Cases in which the Special Counsel determines there is reasonable causes to believe that a Federal employee has committed a criminal violation would be reported by the Special Counsel to the Attorney General or the appropriate U. S. Attorney, and the head of the affected agency.

Finally, section 204 authorizes the Special Counsel to issue regulations necessary to carry out the purposes of this section.

#### Section 205

Section 205 amends chapter 43, Performance Evaluation and Rating, of title 5, United States Code.

The principal purposes of revised subchapter I are: 1) to provide for performance appraisal systems to serve as a basis for decisions on developing, rewarding, reassigning, promoting, demoting, and retaining or separating employees, and 2) to abolish present requirements for summary adjective ratings and appeals of performance ratings.

Section 205 amends chapter 43 by striking out existing sections and substituting five new sections.

#### Subchapter I. Performance Appraisal - General

##### Section 4301. Definitions.

Section 4301 defines the coverage of this subchapter. It would extend the coverage of this subchapter to include the Tennessee Valley

Authority, the Department of Energy, the Central Intelligence Agency, the National Security Agency, or a civilian officer or member of a crew of a vessel operated by the Department of the Army or the Department of the Navy, thus terminating several exclusions which are no longer justifiable as statutory exceptions to requirements for appraisals of employee performance. Performance appraisal requirements for the Senior Executive Service are covered in proposed subchapter II of this chapter.

In addition, this section authorizes the Office of Personnel Management to except an agency, component of an agency, or group of positions from this subchapter. This authorization permits the OPM the flexibility to make exceptions to the coverage of this subchapter whenever it determines that an exception is in the interest of good administration and revoke an administrative exception when no longer warranted.

Finally, "unacceptable performance" is defined as performance which is not acceptable as a continuing level of performance.

Section 4302. Performance appraisal systems; establishment of

Subsection (a) requires agencies to develop and establish one or more performance appraisal systems which will encourage quality performance and enhance productivity. It requires periodic appraisals of job performance under regulations established by the Office of Personnel Management.

Employee participation in establishing performance objectives is encouraged since experience has shown that doing so motivates employees to accomplish the objectives. It does not, however, abridge management's rights to establish performance standards for fully satisfactory performance.

Performance appraisals made under the provisions of this subchapter are used as a basis for decisions to develop, reward, reassign, promote, demote, and retain or separate employees. Under current provisions, performance appraisals and performance-related decisions are made under several different statutory and regulatory requirements. For example, performance ratings are assigned under the provisions of this chapter. Quality step increases are granted under current chapter 53 but incentive awards are granted under chapter 45. A single integrated framework for performance appraisals for all purposes is needed to better interrelate the various decisions made based on performance.

It is specifically intended that merit pay and bonus decisions for employees in the Professional and Administrative Service and within-grade increase eligibility for Clerical and Technical Service employees based on performance appraisals.

2.04

Subsection (b) sets forth the basic requirement that performance appraisal systems conform to regulations issued by the Office of Personnel Management. The regulations shall include provisions for rewarding, assisting improvement of, and separating employees based on their performance.

Agencies are required to take action, based on performance appraisals, to:

- (1) recognize employees whose performance exceeds requirements;
- (2) improve employees' performance which is minimal or unsatisfactory
- (3) remove employees from their positions when performance is unacceptable.

Section 4303. Actions based on unacceptable performance

This section establishes a new procedure for demoting or separating employees from the service because of unacceptable performance.

Unacceptable performance means performance which is not acceptable as a continuing level of performance. What period of time may be involved is not definable since it depends on the nature of the job. An employee may be removed or demoted any time that his or her performance becomes unacceptable.

Under this new procedure, an employee is entitled to:

1. at least 30 days' written advance warning of the action proposed which identifies the expected standard of performance, and the areas in which the employee's performance is not fully acceptable;
2. be represented;
3. reply orally and in writing to the proposed action;
4. an opportunity within the time specified in the written notice to demonstrate acceptable performance; and
5. a written decision which states the reasons for the decision. The decision must be concurred in by a higher level official than the official who proposed the action.

The purpose of this procedure is to provide the employee with notice that his/her performance is not acceptable, to give the employee opportunity to improve, and to permit the employee to provide a reply to the proposed action and the reasons for the action. The employee may not be represented by an individual whose activities as representative would cause a conflict of interest or position. The requirement for concurrence in the decision by a higher level official is a safeguard against taking unwarranted actions.

2.05

Two restrictions on agencies are added to avoid their delaying decisions on proposed demotions and removals and in carrying out these decisions. These restrictions also give the employee faster resolution of a proposed action. First, an agency can provide the employee with a notice period of more than 60 days only in accordance with regulations issued by the Office of Personnel Management. For example, the OPM may determine that for more complex jobs, a 90 day or longer notice period is necessary in order for an employee to have a fair opportunity to demonstrate satisfactory performance. Alternatively, the OPM could establish general criteria to be followed by agencies in setting the lengths of notice periods. Second, an agency has a maximum of thirty days in which to separate or demote an employee once the notice period expires.

Subsection (d) provides that when no action is taken because the employee's performance improved during the notice period and continues to be acceptable for one year from the date of the advance warning, that the record of the unacceptable performance be removed from the employee's official personnel folder. The purpose of this subsection is to provide that when an employee improves his or her performance to an acceptable level and maintains that improved level of performance, that he or she not be adversely affected by a record of previously unacceptable performance.

Subsection (e) grants a right of appeal to the Merit Systems Protection Board to employees who are demoted or separated for unacceptable performance. The appeal would be conducted under the appeal rights and procedures established in proposed action 7701. In order to avoid the delay and cost entailed by unnecessary hearings, a restriction is added which permits the appeals officer to hold an evidentiary hearing only when there are disputes concerning material evidence of fact requiring presentation of evidence. No right to a hearing is provided because actions based on performance usually are based on a written record which do not require a hearing to present the facts of the case.

The appeals officer's decision must be based on the following factors and no others: (1) whether the agency action contained error which substantially affected the employee's rights; (2) whether there was discrimination prohibited by proposed section 204 (c)(1) of this title; and (3) whether the agency decision to demote or separate was based on reasonable evidence of unacceptable performance -- i.e., whether it was arbitrary or capricious. These criteria are included to establish a standard by which these actions are to be decided which both protects the employee's rights and avoids unwarranted reversal of an agency's action.

2.06

Subsection (f) provides that section 4303 does not apply to the demotion of a supervisor, who has not completed the probationary period established under section 3321(a)(2) of this title in an initial supervisory position, to the grade previously held. This provision permits a limited probationary period and demotion without following the procedure established in subsection (b) for a newly selected and promoted supervisor who does not perform the supervisory duties acceptably. It also guarantees that in such case, the individual is entitled to be returned to the grade held prior to selection for the supervisory position.

Subsection (f) further provides that the procedures in this section do not apply to the separation or demotion of an individual in the competitive service who has not completed a probationary or trial period or who has not completed one year of current continuous service under other than a temporary appointment limited to one year or less or to an individual in the excepted service who has not completed one year of current continuous service in the same line of work. The language of this provision is parallel to that for adverse action coverage under chapter 75. The probationary or trial period, or the first year of service under an appointment for which there is no probationary or trial period, is an extension of the examining process to determine an employee's ability to actually perform the duties of the position. It is inappropriate to restrict an agency's authority to separate an employee when he or she does not perform acceptably during this period.

Finally, nonpreference eligible employees in the excepted service who do not currently have a statutory right to appeal or grieve separations or demotions based on performance would not be given that right.

#### Section 4304. Responsibilities of the Office of Personnel Management

This section identifies the responsibilities of the Office of Personnel Management in providing technical assistance to agencies in developing performance appraisal systems and requiring corrective action when a system does not meet the requirements of this subchapter and implementing regulations. The present requirement for prior approval of plans is not continued in this proposed revision.

#### Section 4305. Regulations

This section authorizes the OPM to issue regulations to carry out the purposes of this subchapter.

#### Section 206

Section 206 amends chapter 75, Adverse Actions, of title 5, United States Code.

2.07

The principal purposes of section 206 are: 1) to extend the statutory adverse action and appeal rights of preference eligibles to nonpreference eligible employees in the competitive service; 2) to authorize the Office of Personnel Management to extend coverage to positions administratively excepted from the competitive service; and 3) to redefine the actions covered by adverse action procedures. Section 206 would amend chapter 75 by adding new sections and reorganizing existing provisions in a more logical arrangement. Modifications in wording to obtain consistency of style and format are identified as technical changes. Section 206 amends subchapters I and II of chapter 75 of this title by striking out existing subchapters and substituting two new subchapters.

#### Subchapter I, Suspension of 30 days or Less

##### Section 7501. Definitions; application

Section 7501 defines the employee coverage of this subchapter and the term "suspension". This subchapter would add several procedural protections for suspensions of thirty days or less of competitive service employees who are serving under career, career-conditional, and other non-temporary appointments, and who have completed a probationary or trial period. This definition of employee would include all competitive service employees who are currently covered by these procedural protections, but would not include an individual in the Senior Executive Service, an individual occupying a position excluded from coverage of this subchapter by regulation of the Office of Personnel Management, and an individual appointed by the President.

The definition of "suspension", which has been established in Office of Personnel Management policy issuances, is added for clarity.

##### Section 7502. Actions covered

Section 7502 specifies that this subchapter covers suspensions of thirty days or less.

The provisions of this subchapter do not apply to the suspension of an employee under present section 7532 of this title, which outlines the procedures to be followed when such an action is taken in the interest of national security nor do they apply to a suspension taken by the Merit System Protection Board under provisions of Reorganization Plan No. - of 1978.

##### Section 7503. Cause and procedure

Subsection (a) provides that an action to suspend an employee must be taken in accordance with regulations prescribed by the Office of Personnel Management and must meet the criterion of being "for such cause as will promote the efficiency of the service".



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Definitions (2), (3), (4), (5), and (6) are defined elsewhere in title 5 or in civil service regulations or policy issuances and are added for uniformity and clarity.

Subsection (b) identifies the three groups of positions to which this subchapter does not apply. The first exception is for positions the appointment to which Congress requires confirmation by the Senate or which are filled with the advice and consent of the Senate. The exception is continued from current law.

The second, a new exception for positions of a confidential or policy-determining character, is an extension of the first. The concept of tenure and protection against dismissal is inimicable to the purpose of such positions and to the confidential relationship between incumbent and supervising official, or the commitment of the incumbent to Administration policy objectives. The determination that a position which is administratively excepted from the competitive service meets one of these criteria shall be made by the Office of Personnel Management. Positions meeting the criteria are placed in Schedule C (positions at GS-15 and below), or filled by Non-career Executive Assignment (GS-16, -17, and -18).

This exception applies to positions of a confidential or policy-determining character which do not meet the criteria for inclusion in the proposed Senior Executive Service or which are in the statutorily excepted service.

A determination that a position in the statutorily excepted service is of comparable confidential or policy-making character shall be made by the head of the agency since this is compatible with the concept that positions excepted by statute from the competitive service are under the control of the head of the agency. Any determination that a position is of a "policy-determining or confidential" character shall be made under criteria established by OPM regulation. A preference eligible against whom an adverse action is taken who alleges that his position did not meet these criteria may appeal to the Merit Systems Protection Board under the provisions of section 7701.

The third exception is for positions in the Senior Executive Service.

Subsection (c) provides that the Office of Personnel Management may by regulation extend the provisions of this subchapter to any position or group of positions which it has administratively excepted from the competitive service. These positions are now excepted under Schedules A and B because competitive examinations cannot be administered. Although many positions in the administratively excepted service are career positions in the sense that employees spend their careers in the positions, only preference eligibles are currently entitled to adverse action coverage. This subsection permits the Office of Personnel Management to extend adverse action and appeal coverage to positions or groups of positions which meet criteria it establishes for granting these rights.

2.09

Subsection (b) defines the rights of an employee against whom a suspension of thirty days or less is proposed. These are the rights currently provided by statute. In addition, the right to furnish affidavits in support of the answer is expanded to include other documentary evidence which the employee may wish to submit. The employee is also accorded the right to reply orally. The right to review any material on which the agency has relied in proposing an action shall be provided by the Office of Personnel Management by regulation. An employee who is suspended for 30 days or less is entitled to have the action reviewed by his/her agency, but has no right of appeal to the Merit Systems Protection Board.

#### Section 7504. Regulation

Section 7504 authorizes the Office of Personnel Management to issue regulations to carry out the purposes of this subchapter.

#### Subchapter II. Removal, Suspension For More Than 30 Days, Reduction In Grade or Pay, Furlough

#### Section 7511. Definitions; application

Subsection (a) provides a statutory basis for the procedural protections and appeal rights now granted employees, other than Senior Executive Service employees, in the competitive service who are serving under career, career-conditional, or certain other non-temporary appointments, and who have completed a probationary or trial period. It also continues the present coverage of employees serving under certain other appointments, for which there is no probationary or trial period, after they complete one year of current continuous employment. The wording of this subsection differs from that currently in title 5 to clearly provide coverage to employees serving under several types of appointments not in existence at the time the existing legislation was enacted. Protections against arbitrary or capricious actions have become established by practice and Executive order as a basic right of competitive service employees. It is appropriate that the rights extended to nonpreference eligibles by Executive Orders 11491, as amended, 11787, and the orders these replaced, 10987 and 10988, be made statutory rights.

Subparagraph (8) of subsection (a) reaffirms procedural protections and appeal rights of preference eligibles in the excepted service. This subsection does not, however, repeal specific exceptions to the provisions of this chapter which are contained in the organic legislation of certain agencies whose employees are excepted from the competitive service by statute.

The phrase "one year of current continuous service in the same line of work", which defines the extent of coverage of employees in the excepted service, is currently used in civil service regulations instead of "probationary or trial period".

Section 7512. Actions covered

This section identifies the actions covered by this section; removals, suspensions for more than thirty days, reductions in grade or pay; and furloughs for thirty days or less. Present language has been changed from "reduction in rank or pay" to "reduction-in-grade or pay". Furloughs for more than a total of thirty days shall continue to be reduction-in-force actions taken under section 3502 of this title. The provisions of this subchapter do not apply to the suspension or removal of an employee under present section 7532 of this title, which outlines the procedures to be followed when such an action is proposed in the interest of national security. The exclusion of demotions of supervisors who have not completed the probationary period established by section 3321 (a) (2) in an initial supervisory position to the grade previously held is a conforming change to section 4303 of this title. It applies only to actions based on less than satisfactory performance of supervisory duties. The exclusion of demotions or removals under section 4303, is a conforming change to the procedure for taking actions based on unacceptable performance. Finally, this subchapter does not apply to an action initiated under Reorganization Act No.- of 1978 which provides procedures governing a disciplinary action ordered by the Merit Systems Protection Board against a Federal, state or local employee.

Section 7513. Cause and procedure

Subsection (a) provides that an agency may take an adverse action against an employee only for such cause as will promote the efficiency of the service. Any action taken must comply with regulations prescribed by the Office of Personnel Management. These are identical to current statutory provisions relating to adverse actions.

Subsection (b) specifies the minimum rights of an employee against whom an adverse action is proposed. These are:

1. At least thirty days' advance written notice of the proposed action. The thirty day period may be reduced only when there is reasonable cause to believe the employee guilty of a crime for which a sentence of imprisonment can be imposed. The notice must state, specifically and in detail, all reasons for the proposed action. This is identical to the current statutory provision.
2. A reasonable time to answer orally and in writing and to furnish affidavits to support the answer. This right is expanded to permit the employee to submit other documentary evidence in addition to affidavits. The term "answer orally"

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is substituted for "answer personally" as a more accurate distinction between the two types of answers which an employee may make. The intent, however, is still that the employee have the opportunity to reply in person to an individual authorized to make or recommend a decision on the proposed action. A "reasonable time" is not defined because what is reasonable depends on the complexity of each individual case. The right to review material on which an agency has relied in proposing an action is provided by OPM regulation.

3. To be accompanied by a representative. The right to be accompanied by a representative at the predecision stage is currently authorized by a number of agencies, but the statutory right to representation is restricted to the appellate stage of an action. It is appropriate that the right be extended by statute to the predecision stage. The employee may not, however, be represented by an individual whose activities as representative would cause a conflict of interest or position. The provision does not authorize an employing agency to pay the cost of an employee's representative.
4. A written decision, including a statement of those reasons in the notice of proposed adverse action which have been found sustained, and those which have not been sustained, shall be furnished the employee at the earliest practicable date. This provision would give the employee a right to a decision and the reasons for it, whether or not it is adverse to him.

Subsection (c) retains to the agency head the discretionary authority to provide the opportunity for a hearing, at the reply stage, which would include the right to examine witnesses, prior to the final agency decision in proposed actions. A hearing may also be provided in lieu of the oral reply. The wording of this subsection represents a technical change to reflect the longstanding interpretation and application of this provision.

Subsection (d) establishes an employee's right to appeal an adverse action effected under this subchapter to the Merit Systems Protection Board.

Subsection (e) requires that certain documents, all of which are provided by or furnished to the employee, relating to adverse actions be made a part of the agency's records, and furnished, on request, to the Merit Systems Protection Board to insure that a record of the action is retained and available if the action is appealed.

#### Section 7514. Regulations

This section authorizes the Office of Personnel Management to issue regulations to carry out the purposes of this subchapter.

Section 207

Section 7701. Appellate procedures

Section 7701 provides for the processing of adverse action and other appeals within the jurisdiction of the Merit Systems Protection Board. Appeals officers and administrative law judges may adjudicate the appeals and have authority to decide the cases based on the written representations of the parties or after conducting a hearing. The decision on the appeal shall be final unless a party or the Office of Personnel Management petitioned the Board, not later than 30 days after receiving notice of the decision, except for good cause shown, for a review after its issuance, or unless the Board reopened the case on its own motion. Cases may be reopened by a single member except in those cases decided by administrative law judges in which applicable law requires action by the full Board.

This section also provides that, so long as the Board is responsible for administering the complaint procedures of title VII of the Civil Rights Act of 1964, as amended, an appeals officer handling these complaints shall have the authority to dispose of the case with or without a hearing, pursuant to regulations issued by the Board. Under the provisions of this section, a Federal employee or applicant for Federal employment shall submit the discrimination complaint to the agency, which shall have 60 days to resolve the matter; the complainant may appeal to the Board either upon expiration of that period if no decision has been issued by the agency, or within 30 days after notice of the agency's decision. Class discrimination complaints may be processed by appeals officers pursuant to regulations issued by the Board.

The Board and its appeals officers have the authority to consolidate appeals filed by two or more appellants or join two or more appeals filed by the same appellant for combined processing when it would be expedient to do so and when the procedure does not prejudice the parties.

In appeals from actions subject to the Board's appellate jurisdiction, wherein allegations of discrimination are raised as a basis for the action, the discrimination complaint shall be resolved as part of the Board's appellate adjudication.

This section authorizes the Board's members, its Administrative Law Judges, its appeals officers, and arbitrators assigned by the Board to require payment, by agencies which are losing parties to proceedings before the board, of reasonable attorney fees incurred by an employee.

This section also provides for the election of an alternative arbitration procedure for the resolution of appeals otherwise subject to the Board's appellate jurisdiction. Qualification standards for arbitrators the Board's preparation of lists of qualified private arbitrators, and the parties' selections from these lists are subject to regulations and procedures administered by the Board. An individual who elected arbitration shall be considered to have waived his right of appeal to the Board.

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In addition, this section requires the Executive agencies under the jurisdiction of the Board to comply with the Board's final decisions and orders, and it authorizes the Special Counsel to initiate disciplinary action against individuals, other than Presidential appointees, who deliberately fail to comply; the Special Counsel shall report cases involving Presidential appointees to the President. Such disciplinary actions initiated by the Special Counsel shall be subject to the procedures for final decision by the Board applicable to other disciplinary actions initiated by the Special Counsel as set forth in section 204.

Section 7702. Judicial review of decisions of the Merit Systems  
Protection Board

Section 7702 provides for review by the Court of Claims or U.S. Court of Appeals of all orders and final decisions of the Board except those issued in connection with complaints of discrimination based on race, color, religion, sex, national origin, age, or life or health insurance claims, which are reviewable by U.S. District courts. In order to obtain judicial review, an individual shall be required to file a petition for review within 30 days after receipt of notice of the Board's final decision.

In addition, this section provides that the Court of Claims and the U.S. Courts of Appeal shall review cases filed with them to determine whether the decision was arbitrary or capricious and not in accordance with the law, and whether the procedures required by law or regulations were followed. If the court determines that further evidence is necessary, it shall remand the case to the Board for such further processing as appropriate. The Board shall file with the court a record of its proceedings following the remand. The Board decision shall be conclusive when supported by substantial evidence in the administrative record.

This section further provides that the Director of the Office of Personnel Management may request a review of any final decision or order of the Board by filing a petition for judicial review with the U.S. Courts of Appeals for the District of Columbia. The Board and the parties to the proceeding which gave rise to the dispute are entitled to appear before the court. The granting of the petition for review shall be discretionary with the court.

Title III - Staffing.

Section 301. Organization

Section 301 amends chapter 11, as follows:

(a). Section 1104 - Functions of the Director

In subsection (a) the words "Director of the Office of Personnel Management" are substituted in lieu of "Chairman, United States Civil Service Commission" on authority of Reorganization Plan No. \_\_\_\_, sec. 102. In subsection (a)(1) the words "acting with the Civil Service Commission boards of examiners, so far as practicable" are omitted, and the word "activities" is substituted in lieu of "proceedings."

This amendment conforms with section 1105 of the proposed legislation which eliminates boards of examiners.

(b). Section 1105 - Delegation of Authority

In paragraph (1) the President is given the authority to delegate, in whole or in part, all personnel management functions, including examining authority, to the Director of the Office of Personnel Management.

In paragraph (2) the Director is given authority to delegate personnel management functions, including examining authority, to the heads of agencies employing persons in the competitive service.

The proposed legislation completely revises section 1105. Under present law, examining authority is vested in boards of examiners appointed by the Civil Service Commission. This amendment will allow the Director of the Office of Personnel Management to delegate examining authority directly to the heads of agencies, thereby allowing greater flexibility in the examining process.

(c). Chapter 11 - Analysis

The analysis of chapter 11 is amended to conform with the proposed changes in sections 1104 and 1105 of title 5, U.S.C., and the addition of a new section 1106.

Section 302. Definitions

Section 302 amends chapter 21, as follows:

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Section 2108 - Veteran; disabled veteran; preference eligible

In paragraph (4), "a retired member of the armed forces" is defined as a member or former member of the armed forces who is entitled, under statute, to retired, retirement, or retainer pay on account of such service as a member. This definition is taken from section 3501(a)(2) of this title which defines retired member of the uniformed service.

In paragraph (5) the limitation of preference for retired members of the armed forces is explained. To be a preference eligible, a military retiree must satisfy one of the two criteria. According to subparagraph (A), the individual must be a disabled veteran within the meaning of paragraph (2) of this section. Thus, a military retiree is a preference eligible if he or she has served on active duty in the armed forces, been discharged under honorable conditions, and has established the present existence of a service connected disability or is receiving compensation, disability retirement benefits, or pension because of a public statute administered by the Veterans' Administration or a military department. According to subparagraph (B) the military retiree is considered a preference eligible if he or she did not retire at a field grade, general officer rank or the equivalent, except if the individual is disabled.

The effect of this amendment is to eliminate preference for non-disabled military retirees who have retired at a field grade, general officer rank or the equivalent. Crediting of military experience in determining the qualifications of these individuals, where such experience is job related, is not affected. Preference for non-disabled military retirees who have not retired at a field grade, general officer rank or the equivalent continues with the time limitations imposed by section 3303a(2) of this title (relating to preference in consideration for appointment) and section 3501(a)(4) of this title (relating to preference in retention).

Paragraphs (1), (2), and (3) provide the basic definitions of "veteran," "disabled veteran," and "preference eligible" which are used throughout this title. These definitions are not amended. The proposed legislation imposes a limitation on the time period within which preference may be exercised by non-disabled preference eligibles and by non-disabled preference eligibles who are military retirees for purposes of appointment and retention. These limitations are, however, set forth in the appropriate sections of title 5, so as not to affect an individual's entitlement to preference for other purposes.

Section 303. Authority for Employment



Section 303 amends chapter 31, as follows:

(a). Section 3111 - Acceptance of volunteer services

In subsection (a) "student" is defined as an individual who is enrolled, not less than half-time, in an institution of higher education or a secondary school. The terms "institution of higher education" and "secondary school" have the same meaning prescribed for such terms in section 1201 of the Higher Education Act of 1965, 20 U.S.C. 1141.

In subsection (b) the conditions under which the head of an agency may accept voluntary services are explained. The service must be performed by a student, as defined in subsection (a), with the permission of his or her school, as part of an agency program to provide meaningful experience for the student volunteer. Voluntary services cannot be accepted if they will displace Federal employees. Finally, the agency must provide meaningful experience in an organized and systematic manner.

Subsection (c) explains that a volunteer is not considered a Federal employee for the purposes of any Federal law except for injury compensation and tort claims. The exclusionary language of subsection (c), when read with subsection (b), precludes payment for voluntary services under the Fair Labor Standards Act of 1938, as amended, or any other statute providing for the compensation of Federal employees.

Reference is made to the Office of Personnel Management in lieu of "Civil Service Commission" throughout the amendments made by this title, on authority of Reorganization Plan No. \_\_\_\_, sec. 102, 1978.

(b). Chapter 31 - Analysis

The analysis of chapter 31 is amended to conform with the addition of a new section 3111.

Section 304. Examination, Certification, and Appointment

Section 304 amends chapter 33, as follows:

(a). Section 3303a - Preference eligibles; appointment; time limit

This section is new. Subsection (a) explains the limitation placed on preference as applied in consideration for appointment.

Paragraph (1) limits preference in consideration for appointment for non-disabled veterans to the 10 year period immediately following separation from the armed forces. Paragraph (2) limits preference for

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retired members of the armed forces who did not retire at a field grade, general officer rank or the equivalent to the 3 year period immediately following separation from the armed forces. Paragraph (3) continues the lifetime preference for preference eligibles under section 2108(3)(C)-(G).

Under present law, all preference eligibles are entitled to lifetime preference. The effect of this amendment is to limit a non-disabled veteran's entitlement to preference in consideration for appointment. Non-disabled military retirees who did not retire at field grade, general officer rank or the equivalent retain their preference for 3 years following separation from the armed forces. All other non-disabled veterans retain their preference for 10 years following separation from the armed forces. Disabled preference eligibles, including retired members of the armed forces who are disabled, retain lifetime preference for purposes of consideration for appointment.

The limitation imposed by this amendment is not intended to affect a non-disabled preference eligible's entitlement to preference for other purposes. The time limitation does, however, apply throughout subchapter I of chapter 33 of this title, unless specific reference is made to section 2108(3) of this title.

(b). Section 3305 - Competitive service; preference eligibles; applications from

This section allows a preference eligible to reopen a closed examination for a position for which there is an appropriate list of eligibles resulting from competitive examination.

Under present law, the Commission is required to hold an examination for a position to which an appointment has been made within the preceding three years on the application of a preference eligible under section 2108(3)(C)-(G) of this title. The proposed amendment changes the criteria for reopening a closed examination from appointment within the last 3 years to existence of an appropriate list of eligibles and extends the right to reopen a closed examination to all preference eligibles. For the purposes of this section, preference eligible is defined by section 3303a of this title, rather than section 2108(3) of this title. Thus, a non-disabled veteran may reopen a closed examination only for a period of time specified in section 3303a(1) or (2) of this title. A preference eligible under section 2108(3)(C)-(G) retains the right to reopen a closed examination without regard to any time limitation.

(c). Section 3309 - Preference eligibles; examinations; additional credit for

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This section is amended to conform with changes in the new section 3303a of this title, which explains the applicability of preference in consideration for appointment under the proposed legislation.

Section 3309 now explains the application of preference in selection. Non-disabled veterans under section 2108(3)(A) or (B) of this title receive a 5 point preference above their earned ratings. Preference eligibles under section 2108(3)(C)-(G) receive a 10 point preference above their earned ratings. Under section 3313 of this title, disabled veterans having a compensable service connected disability will, additionally, "float" to the top of a register, except for certain scientific and professional positions, in which case they receive a 10 point increment to their earned ratings.

Subsection (a) of the proposed amendment retains the 5 and 10 point preference for non-disabled and disabled preference eligibles, respectively. In subsection (a)(1) reference is made to "a preference eligible under section 3303a(1) or (2) of this title" to clarify that preference for non-disabled eligibles will be subject to a time limitation. Subsection (a)(3) incorporates the provision of section 3313 of this title which allows a compensably disabled veteran to "float" to the top of a register. No change is made to this provision.

Subsection (b) conforms to the changes in section 3318(c), in which the Office of Personnel Management is authorized to prescribe regulations for the referral and selection of qualified applicants. Pursuant to this authority, the Office of Personnel Management may, for example, alter the minimum number of candidates from which the appointing authority may select, rank candidates by broad categories without using individual numerical ratings, adopt methods such as those used in State and local public personnel systems, and implement other methods for referral and selection. When these other rating systems are used, preference eligibles will be entitled to equivalent preference.

(d). Section 3314 - Registers; preference eligibles who resigned

The words "in the order named by section 3313 of this title" are omitted as a conforming amendment since the proposed legislation repeals section 3313. The words "Office of Personnel Management" are substituted for "Civil Service Commission."

(e). Section 3315 - Registers; preference eligibles furloughed or separated

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In subsection (a) the words "in the order named by section 3313 of this title" are omitted as a conforming amendment since the proposed legislation repeals section 3313.

In subsection (a) and (b) the words "Office of Personnel Management" are substituted for "Civil Service Commission" and "Commission."

(f). Section 3317 - Competitive service; referral of candidates

Subsection (a) of this section now specifies the minimum number of candidates to be referred for appointment consideration. To conform to the proposed revision of section 3318 of this title, this amendment eliminates that number and allows the Office of Personnel Management to prescribe regulations governing referral.

The words "Office of Personnel Management" are substituted in lieu of "Civil Service Commission."

(g). Section 3318 - Competitive service; selection

In subsection (a), the word "seven" is substituted for "three," after the phrase "available for appointment," and the words "unless the Office of Personnel Management determines that another referral procedure is appropriate" are added after "highest seven eligibles available for appointment".

The effect of this amendment is to eliminate the "Rule of Three" which requires Federal agencies to fill vacancies in the competitive service from among the top three names on a civil service register. Under the proposed amendment, Federal agencies will be required to fill vacancies in the competitive service from among the top seven eligibles available for appointment unless the Office of Personnel Management determines that another referral or selection procedure is appropriate. A nominating or appointing authority will, therefore, be assured of a larger minimum choice of applicants to select from. By regulation, the Office of Personnel Management may expand this minimum number, or adopt other referral and selection methods.

(h.) Section 3318 - Competitive service; selection

Subsection (c) is amended to allow the Office of Personnel Management to prescribe regulations for the selection of qualified applicants. Ranking methods, other than ranking on registers, may thereby be implemented to govern selection.

(i). Section 3321 - Competitive service; probation; period of

Subsection (a)(1) continues the present law concerning an initial probationary period before an appointment in the competitive service becomes final. Subsection (a)(2) authorizes the President to issue orders and directives which provide for a period of probation before an initial appointment to a supervisory or managerial position becomes final. Subsection (b) explains the action to be taken if an individual in a supervisory or managerial position does not satisfactorily complete this probationary period.

Under present law, persons initially appointed to supervisory or managerial positions may be removed only through the application of formal adversary proceedings. The effect of this amendment is to allow the removal of an individual, appointed to a supervisory or managerial position for the first time, if he or she does not satisfactorily complete the period of probation. The individual will be returned to a position of no lower pay or grade than the position occupied by the individual prior to the supervisory or managerial assignment. Although an individual may be serving subject to a probationary period under subsection (a)(2), an agency may still institute adverse action proceedings for cause unrelated to supervisory or managerial performance.

Subsection (a)(2) applies only to persons who are appointed to supervisory or managerial positions after completing the probationary period now required by law. Thus, an individual who enters federal employment in a supervisory or managerial position will be subject to the probationary period specified in subsection (a)(1).

(j). Section 3326 - Appointments of retired members of the armed forces to positions in the Department of Defense

In subsection (b)(1), the words "and, if the position is in the competitive service, after approval by the Civil Service Commission" are omitted.

In subsection (c), the words "or the authorization and approval as the case may be" are omitted.

This section sets forth conditions under which a retired member of the uniformed service may be appointed to a civil service position in the Department of Defense. For positions in the competitive service present law requires prior approval by the Commission in each case. The effect of this amendment is to permit such appointment without such prior approval.

(k). Sections 3306, 3313, and 3319 of Title 5, U.S.C. are repealed

(1). Section 3306 - Competitive service; departmental service; apportionment

This section provides that appointments to positions in the departmental service in the District of Columbia be apportioned among the states, territories, and possessions of the United States. Apportionment is based on population as determined by the last census. The proposed legislation would delete this section, thereby eliminating the apportionment requirement.

(2). Section 3313 - Competitive service; registers of eligibles

This section explains the proper order of ranking eligibles on registers. The proposed legislation will repeal this section as unnecessary.

The provisions of this section governing the ranking of disabled veterans who have a compensable service connected disability are carried into the proposed section 3309(a)(3) of this title. Since section 3317(a) of the proposed amendments will authorize the Office of Personnel Management to prescribe regulations for the referral of candidates, the remaining provisions of this section are unnecessary.

(3). Section 3319 - Competitive service; selection; members of family restriction

This section now disqualifies an individual for appointment in the competitive service when two or more of his or her family members are so employed. An exception is provided for preference eligibles. Under the proposed legislation this section will be deleted.

(1). Chapter 33 - Analysis

The analysis of chapter 33 is amended to conform with the proposed changes in sections 3305, 3309, 3317, and 3318 of title 5, U.S.C., the addition of a new section 3303a, and the repeal of sections 3306, 3313, and 3319 of title 5, U.S.C.

Section 305. Retention Preference

Section 305 amends chapter 35, as follows:

(a). Section 3501 - Definitions, application

Subsection (a)(3), which explains preference for retired members of the uniformed service for retention purposes is retained without change.

In subsection (a)(4), entitlement to preference in retention for all eligibles is explained. Non-disabled veterans under section 2108(3)(A) and (B) are entitled to preference in retention only when the effective date of the reduction-in-force is within three years of the date of initial appointment or within three years of the date of initial return from a leave of absence after performing active military duty. The non-disabled preference eligible is entitled to preference in retention within this three year period irrespective of whether he or she was entitled to preference in consideration for appointment. This three year limitation applies as well to non-disabled military retirees under subsection (a)(3)(B) and (C) of this section.

Lifetime preference in retention is retained for those categories of preference eligibles under section 2108(3)(C)-(G) of this title: a disabled veteran, the unmarried surviving spouse of a veteran, the spouse of a service connected disabled veteran who is unable to qualify for appointment, the mother of an individual who lost his or her life under honorable conditions while serving in the armed forces, and the mother of a service connected permanently and totally disabled veteran. Lifetime preference also continues for the disabled retired member of the uniformed service under subsection (a)(3)(A) of this section. For retired members of the uniformed service "disability" is defined differently for purpose of retention than for appointment. This distinction is carried over from present law.

(b). Section 3502 - Order of retention

In subsection (a)(2), "3501(a)(4)" is substituted in lieu of "3501(a)(3)." This is a conforming amendment since, under the proposed legislation, section 3501(a)(4) of this title explains an individual's entitlement to preference in retention.

(c). Section 3502 - Order of retention

In subsection (a), a new paragraph (A) is added which explains computation of length of service for non-disabled preference eligibles. A non-disabled preference eligible will be entitled to an additional 5 years added to his or her length of service if he or she is no longer entitled to preference in retention under section 3501(a)(4) of this title. Thus, once a non-disabled eligible has been employed for 3 years, either upon initial appointment or upon initial return from a leave of absence taken to perform active military duty, he or she will have an additional 5 years added to length of service.

(d). Section 3502 - Order of Retention

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Subsection (b) is amended to provide that a preference eligible employee whose performance appraisal meets a standard of adequacy under a performance appraisal system implemented pursuant to Chapter 43 of title 5, U.S. Code, is entitled to be retained in preference to other competing non-preference eligible employees. This amendment conforms to the changes proposed in Chapter 43 of title 5. No substantive change is intended.

(e). Section 3503 - Transfer of functions

In subsections (a) and (b) the words "each competing employee" are substituted in lieu of "each preference eligible employee." Existing regulations (5 C.F.R. 351.301) provide that, in a transfer of function, each competing employee identified with the function shall be transferred with it. The effect of this amendment is, thus, to conform with existing practice.

Section 306. Training

Section 4103 - Establishment of training programs

This amendment expands on current law by allowing an agency to train its employees for placement in another agency if the employees are slated for separation under conditions which would entitle them to severance pay under section 5595 of title 5. Before authorizing such training, the agency would be required to obtain verification from the Office of Personnel Management that there is a reasonable expectation of placement in another agency. The agency would be required to consider, when selecting an employee for such training, the present skills, knowledge, and abilities of the employee, the employee's capability to learn new skills and acquire new knowledge and abilities, and the benefits to the Government resulting from the retention of competent employees.

Section 307. Travel, Transportation, and Subsistence

Section 307 amends chapter 57, as follows:

Section 5723- Travel and transportation expenses of new appointees and student trainees; manpower shortage positions

In subsection (d) the words "Office of Personnel Management" are substituted for "Commission", and the word "not" is omitted. The effect of this amendment is to change existing law by allowing the Office of Personnel Management to delegate its authority to determine positions for which there is a manpower shortage for the purpose of



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this section.

Section 308. Retirement

Section 308 amends chapter 83, as follows:

Section 8336 - Immediate Retirement

In subsection (d)(2) the words "major reorganization" are added after "is undergoing" and the phrase "a major transfer of function" is also added.

Under present law an employee may voluntarily apply for an annuity under this section if: (1) his or her agency is involved in a major reduction in force as determined by the Civil Service Commission; (2) the employee is working in a geographic area within which the Commission has designated the major reduction in force retirement provisions to be applicable; and (3) the employee meets the minimum age and service requirements required for a regular discontinued service annuity (i.e., 20 years of creditable Federal service and minimum age 50, or 25 years of creditable Federal service with no minimum age requirement). This bill would expand the coverage of the major reduction in force retirement provisions to cover all situations included in the definition of "reorganization", as determined by the Office of Personnel Management. In effect, this proposed amendment would permit an employee to retire if his or her agency was engaged in a major reduction in force, a reorganization or a major transfer of function, provided that the Office of Personnel Management approved the use of this special retirement authority. A "major transfer of function" is added as a concept meaning the movement of a continuing function, for example, the work of an office from one place to another, even though the function might remain within the same agency.

Section 309. Extension of Veterans Readjustment Appointment Authority

Section 309 amends title 38, U.S.C., as follows:

Section 2104 - Employment within the Federal Government

Subsection (b) now provides for readjustment appointments in the Federal Government for Vietnam era veterans. Under present law, eligibility for these appointments is restricted to individuals who have been separated from military service within the past year. Authority for readjustment appointments expires on June 30, 1978.

Th proposed legislation will authorize readjustment appointments for persons who were eligible for such appointments as of April 9, 1970 and

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to those Vietnam era veterans who were separated from military service on or after that date. Additionally, the authority for readjustment appointments will be extended to September 30, 1980.

Section 310. Effective date

This section sets forth the effective date for specified amendments to title 5. The following sections are to take effect on October 1, 1980: 2108(4) and (5), 3303a, 3305, and 3309.

The effect of this amendment is to delay the effective date of those provisions of the proposed legislation which will modify veterans preference as it applies to initial entry. Until the effective date of October 1, 1980, the present law controlling veterans preference for initial entry will be applied.

#### TITLE IV SENIOR EXECUTIVE SERVICE

This title is divided into 15 sections. Sections 401 through 411 amend title 5, United States Code, to establish and govern the Senior Executive Service. Sections 412 through 415 are not amendments of title 5, but contain provisions necessary for the transition to the Senior Executive Service. The separate sections, subsections, paragraphs and subparagraphs of the bill are discussed below.

##### Section 401. Coverage

This section, in subsection (a), adds Sec. 2101a. The Senior Executive Service, which defines the Senior Executive Service as consisting of positions properly classified General Schedule 15 and below Executive Schedule III which meet the definition in Sec. 3132 (b)(2) and are not excluded as provided for in section 3132 (c) of title 5.

Subsection (b) excludes the Senior Executive Service from the definition of "excepted service" in section 2103, defining the "excepted service" as consisting of those civil service positions which are not in the competitive service or the Senior Executive Service.

Subsection (c) excludes members of and applicants for the Senior Executive Service from the definition of preference eligible found in 5 U.S.C. 2108 (3) pertaining to veteran preference.

##### Section 402. Authority for Employment

This is the "heart" of the title. It makes several amendments to chapter 31 of title 5, United States Code, which establish and govern the Senior Executive Service. It is divided into four subsections, which are explained separately as follows:

Subsection (a) amends the chapter analysis of chapter 31 (the "table of contents") so that it will properly reflect the content of the chapter after the bill is enacted.

Subsection (b) adds a new subchapter II to chapter 31 of title 5, United States Code, which establishes and provides for the administration of the Senior Executive Service. The new subchapter II contains six sections which are discussed separately below.

Sec. 3131. Establishment of the Senior Executive Service. This section formally establishes the Senior Executive Service and sets forth the objectives of administering the Senior Executive Service,

including: provide excellent Government managers; link managerial success with compensation and retention; provide flexibility in the assignment of executives to best accomplish the agency mission; provide severance pay, retirement benefits and placement assistance to those terminated for nondisciplinary reasons; protect employees from arbitrary or capricious action; provide program continuity and policy advocacy in public programs; maintain a merit system free of improper political interference; ensure accountability for honest, economical and efficient Government; ensure faithful adherence to laws regarding equal employment opportunity, political activity and conflicts of interest; and provide for managerial capability in the executive ranks by systematic development.

Sec. 3132. Definitions and exclusions. Subsection (a) of section 3132 states that provisions of this title apply to those agencies set forth in Section 201 of title 5, United States Code, except as noted below. Subsection (b)(1) excludes from coverage any agency or component thereof excluded from being required to place positions in the Senior Executive Service by the President under Sec. 3132 (c). Subsection (b)(2) of Sec. 3132 defines a "Senior Executive Service position" as a position which exceeds the GS-15 or equivalent level in which the incumbent directs the work of an organization, is accountable for the success of specific programs, monitors organizational progress and adjusts its goals, or supervises the work of employees other than personal assistants. Subsection (b)(3) of Sec. 3132 adds a definition of the term "executive" for convenient usage and for the purpose of limiting the term in subchapter II of chapter 31 of title 5, United States Code, to executives who are members of the Senior Executive Service. Subsection (b)(4) defines a "career reserved position" as a position filled only by a career appointee or under a limited emergency or term appointment. The subsection refers to the need for impartiality or the public's confidence in the impartiality of the Government and notes that the Office of Personnel Management shall prescribe regulations in this area. Agencies shall designate positions as career reserved; non-designation is subject to post-audit by the Office of Personnel Management. Subsection (b)(5) states that a "general position" is one other than a career reserved position and that a general position may be filled either by a career or noncareer appointee or under a limited emergency or term appointment. Subsection (b)(6) defines a "career appointee" as one appointed to a Senior Executive Service position based on competitive selection through a merit staffing process consistent with Office of Personnel Management regulations and approval of managerial qualification in the case of initial appointment. Subsection (b)(7) indicates that a "noncareer appointee" is an individual appointed to a Senior Executive Service position without competition. Subsection (b)(8) defines a "limited emergency appointment" as a nonrenewable appointment, not exceeding eighteen months, to a position established to meet a bona fide, unanticipated urgent need. Subsection (b)(9) defines a "limited term appointment" as a nonrenewable appointment for a maximum of three years to a managerial position the duties of which will expire during that time period.

Subsection (c) of Sec. 3132 provides that agencies may apply to the Office of Personnel Management for exclusion of the entire agency or a part of it from being required to place positions in the Senior Executive Service. The reasons justifying the exclusion must be included in the application, but the range of possible justifications is not limited in the Act. After review and investigation, as appropriate, the Office of Personnel Management will recommend to the President inclusion or exclusion of the agency or component. If the President makes a written determination of exclusion, the agency or component will be excluded from being required to place positions in the Senior Executive Service.

Subsection (d) of Sec. 3132 indicates that any agency or component excluded from coverage under subsection (c) must make a sustained effort to bring its personnel system into conformity with the Senior Executive Service and that such exclusion may be revoked upon written determination by the President. Under subsection (e) the Office of Personnel Management may recommend revocation of such exclusion to the President at any time.

Subsection (f) of Sec. 3132 requires that the Office of Personnel Management promptly notify Congress of any exclusion of an agency or of an agency component from being required to place positions in the Senior Executive Service.

Subsection (g) of Sec. 3132 requires the Office of Personnel Management likewise to notify Congress of any revocation of exclusions.

Sec. 3133. Authorization for number of Senior Executive Service positions. Subsection (a) of Sec. 3133 requires that each agency examine, in odd numbered years, its total needs for Senior Executive Service positions for the next following two fiscal years and submit a written request to the Office of Personnel Management, in accordance with regulations prescribed by that Office, for authority to establish the specific number of Senior Executive Service positions.

Subsection (b) of Sec. 3133 requires that the agency request submitted under subsection (a) shall be at such time and in such form as the Office of Personnel Management prescribes and shall be based on the following factors: (A) the anticipated program activity and budget requests of the agency for the next two fiscal years; (B) the anticipated level of work to be performed by the agency in the next two fiscal years; and (C) such other factors as may be prescribed from time to time by the Office of Personnel Management.

Subsection (c) of Sec. 3133 requires that the Office of Personnel Management, after its receipt of each agency's request for a specific number of Senior Executive Service positions, and upon consultation with the Office of Management and Budget, authorize for each agency a

specific number of Senior Executive Service positions and the number of positions in the entire Senior Executive Service. The requirement for consultation with the Office of Management and Budget recognizes the fact that executive personnel needs flow from approved programs and budgets. The authorizations are subject to Congressional review as provided in Section 3135 of title 5 as added by this Act. This subsection also authorizes an unallocated pool of 5% of the number of allocated positions.

Subsection (d) of Sec. 3133 states that the authorizations made under subsection (c) shall remain in effect until changed under subsections (e), (g) or (h) of Sec. 3133.

Subsection (e) of Sec. 3133 permits agencies to submit a written request for adjustments to its authorized number of Senior Executive Service positions. The Office of Personnel Management may also make reductions in the number of positions assigned to a particular agency.

Subsection (f) of Sec. 3133 requires the adjustment request to be submitted in such form as the Office of Personnel Management prescribes and to be based on the current budget and program activity in the agency.

Subsection (g) of Sec. 3133 provides that the Office of Personnel Management may make changes in the allocations made under subsection (c), subject to subsections (e) and (f) of Sec. 3133. Subsection (g) of Sec. 3133 further provides that total adjustments during a fiscal year may not enlarge the Senior Executive Service beyond the number identified under provisions of subsection (c).

Subsection (h) of Sec. 3133 provides that the Office of Personnel Management allocation of the number of Senior Executive Service positions will be effective on the next succeeding October 1 following the submission to the Congress of the stewardship report required by Sec. 3135, unless an alternative number is approved by both Houses of Congress prior to the October 1 date.

Sec. 3134. Limitations on noncareer Senior Executive Service appointments. Subsection (a) of Sec. 3134 requires each agency to examine its needs for noncareer Senior Executive Service appointees for the next following fiscal year and to submit a written report to the Office of Personnel Management requesting authority to make a specific number of noncareer Senior Executive Service appointments. Subsection (b) charges the Office of Personnel Management with making a biennial determination of the number of noncareer appointments to be made available to each agency with the provision that the number of noncareer appointees to the Senior Executive Service, Government-wide, must not exceed 15 percent of the total number of Government-wide Senior Executive Service positions.

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Subsection (c) authorizes the Office of Personnel Management to adjust the number of noncareer positions authorized under subsection (a) and (b) for emergency needs provided the number of noncareer executives, Government-wide, does not exceed 15 percent of the total number of Senior Executive Service positions.

Sec. 3135. Biennial Report. This section provides for a biennial report to each new Congress on the Senior Executive Service. This biennial report, which must be submitted at the time the budget is submitted to the first session of each Congress, serves three important purposes. First, it will fully inform Congress on the operation of the Senior Executive Service for the previous fiscal year. Second, it will fully inform Congress as to the proposed scope and operation of the Senior Executive Service for the coming two fiscal years. This will enable Congress to maintain an informed and positive legislative oversight over the Senior Executive Service. Third, the detailed and comprehensive nature of the report will serve to inform the general public of the actions that its Government is taking, and proposes to take, with respect to the management of its executive resources. This section also provides for an interim report to the second session of each Congress showing adjustments to the biennial report.

Sec. 3136. Regulations. This section authorizes the Office of Personnel Management to prescribe regulations necessary to carry out the purpose of subchapter II of chapter 31 of title 5, United States Code.

Subsection (c) amends present Sec. 3104(a) of title 5, United States Code, by adding the word "nonmanagerial" after the word "establish" so as to read, when amended, "(a) The head of an agency named below may establish nonmanagerial scientific or professional positions . . .". The word "nonmanagerial" has been added to make clear that the agency head's authority under Sec. 3104(a) does not relate to the Senior Executive Service.

Subsection (d), likewise, indicates that an agency head may not fill Senior Executive Service positions under the authority of Sec. 3109(b) pertaining to temporary or intermittent contracts with experts and consultants.

Section 403. Examination, Certification and Appointment

This section amends chapter 33 of title 5, United States Code, "Examination, Selection and Placement" by adding a new Subchapter VIII entitled "Senior Executive Service Appointment, Placement, Transfer and Development."

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Paragraph (1) will amend the chapter analysis of chapter 33 so that it will accurately reflect the content of the chapter after the bill is enacted.

Paragraph (2) will add a new subchapter VIII to chapter 33 of title 5, United States Code. The new subchapter VIII contains seven sections which are discussed separately below.

Sec. 3391. General appointment provisions. Subsection (a) provides that qualification standards for all Senior Executive Service positions shall meet Office of Personnel Management standards and in the case of most Presidential appointees the confirmation of the Senate. Subsection (b) states that appointees must meet the qualifications of the positions to which they are appointed, while subsection (c) requires the appointing authority to be responsible for determining that an appointee meets the qualification requirements (other than managerial requirements) for a particular position.

Subsection (d) prohibits discrimination for nonmerit factors such as age, race, national origin, handicapping conditions, sex and religion.

Subsection (e) allows the appointing authority to set the pay level for each employee, subject to Office of Personnel Management criteria.

Sec. 3392. Career appointments to the Senior Executive Service. Subsection (a) provides that career recruitment may (1) include all current Federal employees or (2) be open to Federal employees and to persons outside of Government.

Subsection (b) states that the recruitment process must attempt to reach all groups of qualified applicants, including women and minorities. Subsection (c) charges an agency executive resources board with the conduct of merit staffing, subject to requirements established by the Office of Personnel Management.

Subsection (d) permits the Office of Personnel Management to appoint members of Qualifications Review Boards from within and outside the Federal service to certify the managerial qualifications of candidates for entry into the Senior Executive Service, based on Office of Personnel Management criteria to include (1) demonstrated performance in managerial work, (2) successful participation in an approved executive development plan, or (3) unique or special individual qualities predictive of success in managerial work. Subsection (e) requires employees with career status from other Government personnel systems to have their qualifications approved by the Office of Personnel Management for a career appointment. Subsection (f) requires a one year probationary period for employees entering the Senior Executive Service under career appointments.



Sec. 3393. Noncareer appointments to the Senior Executive Service.  
Subsection (a) permits the appointing authority to recruit and appoint noncareer Senior Executive Service employees without managerial qualifications approved by the Office of Personnel Management. Similarly, under subsection (b), such an employee may be removed by the appointing authority. Employees given noncareer appointments acquire no credit toward career status under subsection (c). Subsection (d) prohibits noncareer appointments to "career reserved positions," as defined in Sec. 3132(b)(4).

Sec. 3394. Limited appointments to the Senior Executive Service.  
Subsection (a) provides that limited emergency appointments to the Senior Executive Service may only be made when filling new positions established in a bona fide emergency (as defined by Office of Personnel Management regulations); may not exceed 18 months; are nonrenewable; and may be recruited for by the agency without regard to the competitive process. Under subsection (b), limited term appointments may be made only for positions the duties of which will expire in three years or less; are nonrenewable; and may be filled by the agency without regard to the competitive process. Subsection (c) makes clear that a Senior Executive Service employee appointed under either type of limited appointment acquires no credit toward career status. Subsection (d) requires Office of Personnel Management approval of use of limited appointment authority before making such an appointment.

Sec. 3395. Placement and transfer within the Senior Executive Service. Subsection (a) permits career appointees to: (1) be reassigned to a Senior Executive Service position in the same agency; (2) transfer to a Senior Executive Service position in another agency; and (3) request assignment outside the Senior Executive Service.

Subsection (b) permits an executive with a "limited appointment" (limited emergency or limited term) to be reassigned to a position meeting the criteria under which the employee was originally appointed. However, continuous service in any one agency under a limited emergency appointment may not exceed 18 months, and under a limited term appointment such service may not exceed three years. An executive with a limited appointment may not be given a career appointment in the Senior Executive Service except under the competitive merit staffing process and may not be given another limited appointment in the same agency when the maximum period of service authorized for the original appointment has expired, until one intervening year has passed.

Subsection (c) states that an executive with a noncareer appointment may be reassigned or transferred to any general Senior Executive Service position in the same agency or in another agency, and may be appointed to a noncareer position outside the Senior Executive Service, but may not be given a career appointment except under the competitive merit staffing process. Subsection (d) prohibits the involuntary reassignment of a career employee within 120 days after the appointment of an agency head.

Sec. 3396. Development for and within the Senior Executive Service. This section provides for the establishment of programs, by the Office of Personnel Management or by agencies under criteria established by the Office of Personnel Management, for the systematic development of candidates for the Senior Executive Service and for the continuing development of members of the Senior Executive Service. Further, the Office of Personnel Management is required, under this section, to encourage service in a variety of agencies, in State or local governments, and in the private sector. The section also provides for sabbaticals for career executives in the form of administrative leave for up to eleven months plus travel and per diem costs when essential to the development. The purpose of the sabbatical period is to engage in study or unpaid work experience which will contribute to the individual's development and effectiveness in performing his/her official duties. An individual may not be granted more than one sabbatical in a ten year period.

Sec. 3397. Regulations. Under this section the Office of Personnel Management may prescribe regulations necessary to carry out the purpose of subchapter VIII of chapter 33 of title 5, United States Code.

#### Section 404. Retention Preference

This section amends chapter 35 of title 5, United States Code, which deals with "Retention Preference, Restoration and Reemployment," by adding a new subchapter V entitled "Removal, Reinstatement and Guaranteed Placement Provisions in the Senior Executive Service."

Paragraph (1) amends the chapter analysis of chapter 35 so that it will properly reflect the content of the chapter after the bill is enacted.

Paragraph (2) amends present 5 U.S.C. 3501(b), regarding retention preference, so that the subchapter does not apply to employees in the Senior Executive Service.

Paragraph (3) adds a new subchapter V to chapter 35 of title 5, United States Code. The new subchapter contains provisions relating to removal, reinstatement and guaranteed placement of Senior Executive Service employees. The four sections of the new subchapter V are discussed separately below.

Sec. 3591. Removal from the Senior Executive Service. Subsection (a) provides that career employees can be removed from the Senior Executive Service: (1) during the one year probationary period; (2) for inadequate managerial performance (cf. chapter 43, subchapter II); or (3) for misconduct, neglect of duty, or malfeasance. Subsection (b) permits removal of limited emergency appointees by the appointing authority prior to the mandatory 18 month separation point. Subsection (c) permits limited term appointees to be removed by the appointing authority prior to the mandatory 3 year separation point. Subsection (d) states that noncareer employees can be removed by the appointing authority. Employees covered by subsections (b) (c) and (d) can be removed without a specific showing of cause.

Sec. 3592. Reinstatement into the Senior Executive Service. This section permits reinstatement of a former Senior Executive Service employee who has career status to any Senior Executive Service position if the individual has successfully completed the Senior Executive Service probationary period, and the separation from the Senior Executive Service was not for misconduct, neglect of duty, malfeasance, or less than fully successful performance as defined in chapter 43.

Sec. 3593. Guaranteed placement in other personnel systems. Subsections (a) and (b) provide a right to placement in a Federal position outside the Senior Executive Service to those career status employees who were appointed to the Senior Executive Service from a career or career-type position within the civil service and who are removed from the Senior Executive Service for reasons other than misconduct, neglect of duty, or malfeasance, during Senior Executive Service probation. Subsection (b) provides the same placement right for career appointees removed from the Senior Executive Service for less than fully successful performance. Subsection (c) states that career executives who accept Presidential appointments outside the Senior Executive Service and then are removed (for reasons other than misconduct, neglect of duty, or malfeasance) are entitled to placement back into the Senior Executive Service, provided they apply for such placement within 90 days after the separation from the Presidential appointment. Subsection (d) states that under subsections (a) and (b) the position in which the employee is placed must be a continuing career position and be at either the salary held prior to appointment to the Senior Executive Service, or at a salary which is equal to the

last Senior Executive Service base pay, whichever is higher. It also states that placement in a position outside the Senior Executive Service shall not cause the separation or reduction in grade of any other employee in the agency. Finally, subsection (e) states that a former Senior Executive Service member receiving retained pay will receive one half of each comparability increase under section 5305 until the employees pay equals the top rate payable to his/her current position.

Sec. 3594. Regulations. This section authorizes the Office of Personnel Management to prescribe necessary regulations to administer subchapter V of chapter 35 of title 5, United States Code.

Section 405. Performance Rating

This section amends chapter 43 of title 5, United States Code, "Performance Rating," by adding a new subchapter II entitled "Performance Appraisal in the Senior Executive Service."

Paragraph (1) amends the chapter analysis of chapter 43 so that it will accurately reflect the content of the chapter after the bill is enacted.

Paragraph (2) adds a new subchapter II to chapter 43 of title 5, United States Code. The new subchapter II contains four sections which are discussed separately below.

Sec. 4311. Senior Executive Service performance appraisal systems.

Subsection (a) requires each agency to develop one or more performance appraisal systems with respect to Senior Executive Service employees. Such systems should: (1) provide for systematic appraisals of job performance; (2) encourage excellence in performance; and (3) link performance with eligibility for retention and performance awards.

Subsection (b) states that each such performance appraisal system shall provide: (1) that performance requirements be established at the beginning of the rating period and communicated to the employee; (2) for written appraisals based on accomplishment of these requirements; and (3) that each employee be shown his/her performance appraisal and rating, be given an opportunity to respond in writing, and have the rating reviewed by a higher managerial level.

Subsection (c) states that the Office of Personnel Management shall order corrective action if an agency performance appraisal system does not meet the requirements of this subchapter and the regulations prescribed thereunder.

Sec. 4312. Criteria for performance appraisals. This section states that managerial success in the Senior Executive Service shall take into account both individual performance and organizational accomplishment.

Sec. 4313. Ratings for managerial performance appraisal. Subsection (a) requires that each performance appraisal system must provide for annual ratings reflecting a number of levels of performance including one or more successful levels or ratings, an unsatisfactory level, and a level which is minimally satisfactory but not acceptable as a continuing level of performance.

Subsection (b) requires that the head of each agency shall establish a system to appraise the performance of members of the Senior Executive Service. The evaluation must take place at least annually on a fixed schedule, except that no evaluation can be made of a career employee within 120 days following the beginning of a new Administration. The evaluations are not appealable. The result of such evaluation is that: (A) employees receiving a rating at a fully successful level may be given performance awards as described in section 5396 as added by this Act; (B) an unsatisfactory rating requires corrective action such as reassignment, transfer, or separation from the Senior Executive Service. Employees who twice in five years receive an annual rating of unsatisfactory must be separated from the Senior Executive Service. Employees who, twice in three years, receive an annual rating reflecting performance which is minimally satisfactory but not acceptable as a continuing level of performance must be separated from the Senior Executive Service.

Sec. 4314. Regulations. This section authorizes the Office of Personnel Management to prescribe regulations necessary for the administration of subchapter II of chapter 43 of title 5, United States Code.

Section 406. Incentive Awards and Ranks

This section amends chapter 45 of title 5, United States Code, by adding a new section 4507 entitled "Incentive Awards and Ranks in the Senior Executive Service."

Subsection (a) requires each agency to forward annually to the Office of Personnel Management information regarding career executives recommended for special rank. The Office of Personnel Management shall recommend to the President appointments to such rank. The President shall commission those selected. The ranks are (1) Meritorious Executive for sustained excellence and (2) Distinguished Executive for sustained extraordinary accomplishment.

Under subsection (b) no more than 5 percent of the members of the Senior Executive Service may be appointed to the rank of Meritorious Executive in a calendar year and no more than 15% of the active Senior Executive Service members may hold the rank at any time.

Subsection (c) permits no more than 1% of the active Senior Executive Service members to hold the rank of Distinguished Executive.

Subsections (d) and (e) provide for cash awards to Meritorious and Distinguished Executives. Meritorious Executives receive \$2,500 annually for a period of five years. Distinguished Executives receive \$5,000 annually for a period of five years. The annual payment of these awards are conditioned upon the person continuing in Government employment in an active status in the Senior Executive Service.

Subsection (f) specifically provides that an employee in the Senior Executive Service, who receives a Presidential appointment outside the Senior Executive Service after receiving such an award, shall continue to receive the annual payments to which he/she otherwise would be entitled.

Subsection (g) states that the Office of Personnel Management, as opposed to the agencies, shall pay for these awards through special appropriations for this purpose.

#### Section 407. Pay Rates and Systems

This section amends chapter 53 of title 5, United States Code.

Paragraph (1) amends section 5308 of title 5, United States Code, "Pay Limitation," so that executives in the Senior Executive Service may be paid up to a rate equal to 96 % of the rate provided for Executive Schedule III.

Paragraph (2) adds a new subchapter to chapter 53 of title 5, United States Code, subchapter X, entitled "Pay for the Senior Executive Service." The sections of subchapter X are discussed below.

Sec. 5394. Purpose; definitions states that the purpose of the new subchapter X is to provide a pay system for the Senior Executive Service which would be established under amended subchapter II of chapter 31 of title 5, United States Code. Section 5394 also provides that the definitions for "agency," "Senior Executive Service position" and "executive" be identical to the meanings given to them by section 3132 added by this Act.

Sec. 5395. Establishment and adjustment of rates of pay for the Senior Executive Service, would establish five or more rates of basic pay. Subsection (a) provides that there shall be five or more rates of basic pay for the Senior Executive Service established and thereafter adjusted by the President. Subsection (b) provides that the lowest rate shall not be less than the sixth step of GS 15 and the highest rate shall not exceed 96% of the rate for level III of the Executive Schedule.

Under subsection (c) the President adjusts the rates of basic pay for the Senior Executive Service at the same time he adjusts the rate of

pay under 5 U.S.C. 5305 and such adjustments are to be included in the President's report to Congress under 5 U.S.C. 5305 (a)(3) or 5 U.S.C. 5305 (c)(1). Subsection (d) states that the rates of basic pay referred to in this section shall supersede any prior rates and shall be printed in the Federal Register.

Subsection (e) limits the total monies (including pay, performance awards, and incentive awards) that an executive can receive during any calendar year to an amount not to exceed 95 percent of the rate provided for Executive Level II.

Sec. 5396. Performance awards for the Senior Executive Service. Section 5396 governs the granting of performance awards to Senior Executives. Subsection (a) states that the purpose of such awards is to encourage excellence, and that the cash awards shall be in addition to basic pay and not subject to the ceiling limitations placed on Government salaries. Subsection (b) provides no awards may be granted to an executive whose last performance rating was less than fully successful. The amount of the award may not exceed 20% of the executive's basic pay. Performance awards may not be paid to more than 70% of the executives in any agency employing 3 or more members in the Senior Executive Service in any fiscal year. Subsection (c) provides that the award shall be paid in a lump sum and will not be subject to retirement or life insurance deductions. This subsection also cites amended section 8339 which provides for a 2 1/2 % annuity calculation in lieu of any lower calculation for years for which a performance award is made. This section contemplates that agencies will routinely include in their appropriations requests funds to make performance awards and will use them for this purpose and no other.

Sec. 5397. Regulations. This section directs the Office of Personnel Management to issue regulations necessary for the administration of pay for the Senior Executive Service, subject to such policies and procedures as the President may prescribe.

Paragraph (3) amends the chapter analysis of chapter 53 of title 5, United States Code, to add a new subchapter X, "Pay for the Senior Executive Service," so that it will properly reflect the content of the chapter after the bill is enacted.

Section 408. Pay Administration

This section amends chapter 55 of title 5, United States Code. It amends 5 U.S.C. 5504(a)(B) so as to include Senior Executive Service employees under the standard Government bi-weekly pay period.

Paragraph (2) amends section 5595(a)(2)(i) to permit severance pay for members of Senior Executive Service.

Section 409. Travel, Transportation, and Subsistence

This section amends section 5723(a)(1) of title 5, United States Code to permit an agency to pay the travel expenses of a new member of the Senior Executive Service. The section also permits an agency to pay the travel expenses for candidates for such positions when the expenses were incurred incident to preemployment interviews requested by the employing agency, by adding a new section 5752 in title 5, United States Code.

Section 410. Leave

This section amends chapter 63 of title 5, United States Code. This section amends 5 U.S.C. 6304, by adding a new subsection (f) to exclude employees in the Senior Executive Service from a limitation on the accumulation of annual leave. Currently, employees may generally not carry over more than 30 days of annual leave from year to year. This exclusion would allow executive managers to spend as much time on the job as the job requires without forfeiting their entitlement to annual leave for later use or to the cash value of that leave upon separation from the Federal service.

Section 411. Adverse Actions

This section amends chapter 75 of title 5, United States Code, which pertains to "Adverse Actions."

Paragraph (1) amends the chapter analysis of chapter 75 so that it will properly reflect the content of the chapter after the bill is enacted.

Paragraph (2) adds a new subchapter V to chapter 75 of title 5, United States Code. The new subchapter V, entitled "Senior Executive Service," sets forth adverse action procedures pertaining to individuals in the Senior Executive Service. Subchapter V contains three sections which are discussed separately below.

Sec. 7541. Definitions. This section sets forth definitions of "employee," "disciplinary action", "removal", and "suspension." An "employee" is defined as an individual in the Senior Executive Service who has either completed one year of continuous service in such Service or was covered by the provisions of subchapter II of this chapter when appointed to a position in the Service. "Disciplinary action" is an action based on the conduct of the employee including, but not limited to, misconduct, neglect of duty, or malfeasance, and not including less than fully successful performance. Disciplinary action may result in involuntary removal, or suspension for more



than 30 days. "Removal" is defined as separation from the Federal service. "Suspension" means the placing of an employee in a temporary nonduty nonpay status for disciplinary reasons.

Sec. 7542. Actions covered. This section states that this subchapter applies to a disciplinary removal or suspension for more than 30 days of an individual in the Senior Executive Service, but does not apply to a suspension or removal under 5 U.S.C. 7532 (National Security).

Sec. 7543. Cause and procedure. Subsection (a) provides that agency disciplinary action against an employee may be taken only for such cause as will promote the efficiency of the service. This subsection also provides for regulations by the Office of Personnel Management, and makes clear that removal for less than fully successful performance is not a disciplinary action. Subsection (b) sets forth procedures for disciplinary actions. The employee is entitled to: at least 30 days written notice stating any and all reasons, specifically and in detail, for the proposed action, except where there is reasonable cause to believe the employee is guilty of a crime for which a sentence of imprisonment can be imposed; a reasonable time to answer, orally and in writing, and to furnish affidavits and documents in support of the answer; be accompanied, represented and advised by a representative; and a written decision, with supporting reasons, at the earliest practicable date. Subsection (c) permits the agency to give a hearing but specifically does not require a hearing.

Subsection (d) requires that documents pertaining to a disciplinary action be made a part of the agency's records and be furnished to the Merit Systems Protection Board or to the Office of Personnel Management upon request.

Section 412. Retirement

This section provides for an immediate annuity if an executive in the Senior Executive Service is separated from the Service because of less than fully successful performance and has completed 25 years of Federal service or has become 50 years of age and completed 20 years of Federal service.

The section also provides for a change in the way retirement annuities are calculated for those members of the Senior Executive Service, or former members, who have received performance awards during their Senior Executive Service careers. For every year that an award was received, the employee's annuity calculation will include 2 1/2 percent of his/her average top three salary in place of any lesser percentage based on years of total service.

Section 413. Conversion to the Senior Executive Service

This section provides specific guidance for the conversion period following enactment with respect to agency action in converting certain positions to the Senior Executive Service and also with respect to the various options of the employee-incumbents of such positions.

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Subsection (a) charges each agency with the responsibility of designating those positions which are to be incorporated into the Senior Executive Service and those positions which are career reserved. Such designations shall be accomplished under the guidance and review of the Office of Personnel Management during the period between enactment and the effective date of the Act. The subsection also indicates that positions which are properly classified above the GS-15 or PAS-4 level may be designated as Senior Executive Service positions even if they have hitherto been classified at the GS-15 or PAS-4 level.

Subsection (b) provides that each agency will submit a request for total Senior Executive Service space allocations and for the number of noncareer appointments needed. The Office of Personnel Management will then establish interim authorizations for such appointments.

Subsection (c) provides two options to employee-incumbents of positions designated as Senior Executive Service. First, the employee may remain in the current appointment and pay system without loss of the associated benefits and provisions. In the alternative, the employee may convert to a Senior Executive Service appointment. The conversion of this appointment would be governed by the provisions of subsection (d), (e), (f), (g) or (h) of this section, as appropriate. The employee must elect one of these options within 90 days from the date he/she is notified in writing that his/her position has been incorporated into the Senior Executive Service.

Subsection (d) states that employees who elect automatic conversion and who are currently serving under career or career-conditional or similar appointments shall receive a career appointment in the Senior Executive Service.

Subsection (e) states that employees who elect automatic conversion and who are currently serving under an excepted service appointment: (1) in a position in Schedule C of subpart c of part 213 of title 5, Code of Federal Regulations; or (2) in a position filled by noncareer executive assignment under subpart F of part 305 of title 5, Code of Federal Regulations; or (3) in a position in the Executive Schedule under subchapter II of chapter 53 of title 5, United States Code except career Executive Schedule positions; and which is not designated a career reserved position in the Senior Executive Service, shall receive a noncareer appointment in the Senior Executive Service.

Subsection (f) provides for employees who are serving in career reserved positions as designated in the Senior Executive Service but are described in subsection (e) shall be reassigned to an appropriate Senior Executive Service general position or terminated.

Subsection (g) allows those persons listed in (e) whose position is designated as a Senior Executive Service position, but who have

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reinstatement eligibility to a position in the competitive service, to request from the Office of Personnel Management reinstatement of career status in order to be converted to a career appointment in the Senior Executive Service. The names and grounds for status of all such employees who are converted to career status must be published in the Federal Register.

Subsection (h) relates to employees who are under a limited executive assignment under subpart F of part 305 of title 5, Code of Federal Regulations, who have elected an automatic appointment conversion, shall be converted to: (1) a Senior Executive Service limited term appointment if the position encumbered will terminate within three years of the effective date; (2) a Senior Executive Service noncareer appointment if the position encumbered is designed as a Senior Executive Service general position; or (3) a Senior Executive Service noncareer appointment and reassigned to a Senior Executive Service general position if the encumbered position is designated as a Senior Executive Service career reserved position.

Subsection (i) deals with pay. If the employees' base pay at the time of conversion is more than the base pay of the level to which they are converted, the employees retain their pay. If there are comparability increases under 5 U.S.C. 5305, these employees receive half of each such increase until their base pay equals the established rate of their Senior Executive Service rank.

Subsection (j) authorizes the Office of Personnel Management to prescribe regulations to carry out the purpose of this section and to provide for an employee appeal to the Merit Systems Protection Board from improper agency action under this section. It also commands the agency to take the corrective action recommended by the Merit Systems Protection Board in its decision on such an appeal under this subsection.

#### Section 414. Repealer

This section repeals all preexisting authority for the establishment or pay of positions subject to section 401 of this Act.

#### Section 415. Savings Provision

Section 415 indicates that enactment of this Act does not decrease the pay, allowances, compensation or annuity of any person.

#### Section 416. Effective Date

This section sets an effective date for this Act of nine months after enactment. The only exception is section 413 (conversion procedures), which takes effect immediately upon enactment.

TITLE V PAY FOR PERFORMANCE

Section 501. Pay for Performance Amendments

Section 501 of this bill amends chapter 53 of title 5, United States Code, by adding a new subchapter to provide for the establishment of a merit pay plan for certain Federal employees.

Section 5371 sets out the guiding policies of the merit pay plan.

The specifics of the merit pay plan will be developed by the Office of Personnel Management in accordance with the principles set forth in this section.

Rather than granting automatic entitlement to progress through the pay range, this plan would provide that such advancement, at least in part, would be based on the quality of the work of those employees covered by this plan.

Performance appraisals would become the tool through which a manager would document another manager's, supervisor's or other covered employee's accomplishments during the review period. Pay increase decisions, including increases in base pay as well as some one-time cash awards, would be based upon the degree to which an individual employee met or exceeded performance objectives or other measures of contribution which might be utilized.

A merit pay budget, consisting partly of monies saved by not making full comparability adjustments under section 5305 of title 5, United States Code, and considering the level of expenditures for within-grade increases and quality step increases for General Schedule employees not covered by this plan would be used as an outside limit on the aggregate amount which could be added to the base pay of all employees covered by this program during a fiscal year; however, there would be no requirement that all of the budget be expended in this manner. It is anticipated that some portion of the merit pay budget might be utilized for one-time cash payments at the manager's discretion.

Proposed new section 5372 describes the major provisions of the merit pay plan.

Subsection (a) establishes and defines the coverage of the merit pay plan.

Subsection (b) provides that the minimum and maximum of each grade in which there are employees who are covered by the merit pay plan shall be the same as the minimum and maximum for those grades as they apply to employees not covered by the merit pay plan. However, it eliminates all specific, intervening steps in the schedule. Therefore, an employee covered by the merit pay plan could have a pay rate at any dollar amount from the minimum to the maximum of the assigned grade.

Subsection (c) provides that when the size of the comparability adjustment is determined each year, the Office of Personnel Management will make a determination as to what portion of that adjustment will be given as a general increase to employees covered by this merit pay plan and what portion will be used to partly fund the merit increase pool. It further provides that whatever portion is not granted as a general adjustment shall be used to partly fund the pool with the remaining funding to be determined considering what percent of payroll is generally expended for within-grade increases and quality step increases for employees who are not covered by this plan.

Subsection (d) provides language which corresponds to the language contained in section 5305(p) of title 5, United States Code. This will insure that any portion of the comparability adjustment which is granted to employees under the merit pay plan will not require them to start a new waiting period for a within-grade increase should they transfer into a grade or a position which is not covered by the merit pay plan.

Subsection (e) insures that every employee will be paid at least the minimum of the grade to which he or she is assigned.

Subsection (f) provides that the manner in which an employee's pay shall advance within the pay range of the assigned grade will be prescribed in regulations developed by the Office of Personnel Management.

Subsections (g) through (m) generally parallel the language currently contained in chapter 45 of title 5, United States Code, which deals with Incentive Awards. The purpose of these sections is to transfer the authority to grant cash awards for employees covered by the merit pay plan in order to promote a more cohesive and comprehensive approach to the use and administration of direct cash compensation which may be granted to an employee for any purpose. Accordingly, employees covered by the merit pay plan are excluded from participation in any program administered under chapter 45 of title 5, United States Code.

The only modification of these basic provisions is the increase from \$5,000 to \$10,000 in the dollar amount which may be granted by the head of any agency. The \$5,000 figure has been in the law since 1954 and, through the passage of time and the attendant inflation, the value of this amount has been seriously eroded. Further, it is considered desirable to delegate greater flexibility and responsibility to the individual agencies to administer their own programs.

Under subsection (n), the Office of Personnel Management will develop regulations which will provide employees covered by the merit pay plan, whose continuous service is interrupted in the public interest by service with the armed forces or by service in essential non-Government civilian employment during a period of war or national emergency, with the opportunity to be advanced within the pay range based upon the quality of their past performance in order that they are not penalized as a result of such service.

Subsection (o) provides that increases in basic pay resulting from the merit pay plan shall be considered fixed by statute. As such, they are included in the amounts to which cost of living allowances and post differentials under 5 U.S.C. 5941 are applied.

Proposed new section 5373 requires the Office of Personnel Management to issue regulations implementing this subchapter.

Section 502. Conforming and Technical Amendments

Subsection (a) of section 502 amends section 4501 of title 5, United States Code, by inserting after (2)(A) "but does not include an individual paid under the merit pay plan established under section 5372 of this title; and". This change recognizes the transfer of the operation of incentive awards for employees covered by the merit pay plan to section 5372 in order that it might become an integral portion of their direct compensation plan. This is intended to focus the attention of Federal managers on this portion of the compensation program when developing recommendations for pay increases to employees.

Subsection (b) of section 502 amends section 4502(a) of title 5, United States Code, by increasing the maximum cash award from \$5,000 to \$10,000.

Subsection (c) of section 502 amends section 4502(b) of title 5, United States Code, by increasing the maximum cash award which may be granted by the head of an agency without the approval of the Office of Personnel Management from \$5,000 to \$10,000. The \$5,000 figure has been in law since 1954 and through the passage of time and the attendant inflation the value of this amount has been seriously eroded.

Subsection (d) of section 502 is an amendment to section 4506 of title 5, United States Code, striking out "Civil Service Commission may" and inserting in lieu thereof "Office of Personnel Management shall" and imposes a duty to prescribe regulations.

Subsection (e) of section 502 amends section 5332(a) of title 5, United States Code, to exclude those employees who will be covered by the merit pay plan. This is the section which currently provides that each employee covered by subchapter III of chapter 53 of title 5, United States Code, is entitled to basic pay in accordance with the General Schedule. However, because employees covered by the merit pay plan will not automatically receive the full comparability adjustment which will be applied to the General Schedule and since the pay ranges under the merit pay plan will not contain any step rates, these employees must be excluded from this provision.

Subsection (f) of section 502 amends section 5334 of title 5, United States Code, by providing that (1) where a reference is made to a 'step' it shall mean any dollar amount within the range for an employee moving to a position covered by the merit pay plan and (2) where reference is made to 'two steps' or 'two step increases' it shall mean six percent for employees covered by the merit pay plan since there will be no steps. Six percent is approximately the size of two within-grade step increases.

Subsection (g) of section 502 amends section 5335(e) of title 5, United States Code, to exclude those employees who will be covered by the merit pay plan. Because these employees will receive individually-determined increases to base pay and advance within a range which does not contain steps, they are excluded from this section which provides for the system of periodic step increases under the General Schedule.

Subsection (h) of section 502 amends section 5336(c) of title 5, United States Code, to exclude employees covered under the merit pay plan from the provisions for receiving additional step increases.

Subsection (i) of section 502 amends the analysis of chapter 53 of title 5, United States Code, to conform to the amendments made by section 501 of this bill.

Section 503. Pay Savings

Section 503 specifies that any changes in pay resulting from the initial implementation of the provisions of this title will not be construed as adverse actions as defined in chapter 75 of title 5, United States Code.

Section 504. Effective Date

Section 504 of the title provides that the provisions of this title will be placed into effect on the first day of the first applicable pay period which begins on or after the ninetieth day following the date of enactment.

## TITLE VI RESEARCH AND DEMONSTRATION AUTHORITY

This title provides the Office of Personnel Management with authority to conduct public management research, to carry out demonstration projects which test new approaches to the conduct of personnel management in the Federal service, and to waive specific portions of personnel laws in order to engage in controlled experiments.

### Section 601

This section contains the technical amendment which designates the existing chapter 13 of title 5, United States Code as "Subchapter I--General" and adds a new "Subchapter II--Research and Demonstration Projects."

### Section 1321. Definitions

Section 1321 defines various terms for purposes of this subchapter.

Paragraph (1) defines the term "agency" to mean an Executive agency as that term is defined in section 105 of title 5, United States Code.

Paragraph (2) defines "employee" as any individual employed in or under an agency.

Paragraph (3) defines "eligible" as any individual who has qualified for appointment in an agency and whose name has been entered on an appropriate employment register of eligibles.

Paragraph (4) defines a "demonstration project" as a controlled action project which will test proposed policy or procedural personnel changes to see if they will result in system improvements. The definition stipulates that such projects will only be conducted by the Office of Personnel Management, or under its supervision.

Paragraph (5) defines a "research program" as a planned study of the manner in which public management policies and systems are operating, the effects of those policies and systems, the possibilities for change, and comparisons among policies and systems.



Section 1322. Research Support Functions

Section 1322 provides specific statutory authority to initiate, support, coordinate, cooperate in, and evaluate public management research and demonstration projects being conducted by Federal agencies, State and local governments, educational institutions, public interest organizations, and the private sector. The section also authorizes the Office of Personnel Management to conduct or sponsor research, to set up a central clearinghouse for the collection, interchange, and dissemination of research information, and to arrange for the application of research to the solution of public management problems. It specifically gives the Office of Personnel Management the option of entering into agreements or contracts with other public or private agencies to carry out these research support functions.

Section 1323. Demonstration Projects

Subsection (a) provides specific statutory authority for the Office of Personnel Management, either itself or through agreements or contracts with one or more Federal agencies and other public and private organizations, to conduct and evaluate demonstration projects. The Office of Personnel Management is also specifically authorized to test new and alternative policies and procedures, to waive those provisions of law and regulation which relate to qualification determination; recruitment; appointment; classification; compensation, except for base pay, leave benefits, insurance, and annuities; assignment; promotion; discipline; incentives, including incentive bonuses or pay; hours of work; methods of involving employees, unions, and employee organizations in personnel decisions; and methods of reducing overall agency staff and grade levels.

Subsection (b) contains requirements which must be met prior to the approval of a demonstration project.

- Paragraph (1) requires that demonstration projects be conducted in accordance with a project plan and prescribes the content of that project plan.
- Paragraph (2) requires publication of the proposed project plan in the Federal Register, the holding of a public hearing, and approval by the participating agency or agencies before demonstration projects can commence.

Subsection (c) limits the size (not more than 5,000 employees and eligibles) and duration (up to 5 years) of demonstration projects.

Subsection (d) permits the termination of demonstration projects if warranted by subsequent Office of Personnel Management or agency review.

Subsection (e) requires observance of existing negotiated agreements and consultation with the employee organization accorded exclusive recognition and subsection (f) requires agency consultation with employees where no exclusive representative exists, prior to conducting demonstration projects.

Subsection (g) requires evaluation of project results.

Subsection (h) requires the cooperation and assistance of agencies in matters relating to the conduct of research and demonstration projects.

Section 1324. Appropriation Authorized

This section authorizes the appropriation of funds for carrying out this subchapter.

Section 1325. Reports

This section requires that the Office of Personnel Management include a summary of research and demonstration project activity along with recommendations for program improvement in its annual report.

Section 1326. Regulations

This section authorizes the Office of Personnel Management to prescribe regulations for the administration of this subchapter.

Section 602

Section 602 consists of technical amendments to the analysis of chapter 13.

STATEMENT OF PURPOSE AND JUSTIFICATION

TO ACCOMPANY THE INDIVIDUAL

TITLES OF A BILL ENTITLED

"CIVIL SERVICE REFORM ACT OF 1978"

## TITLE I MERIT SYSTEM PRINCIPLES

### PURPOSE

The purpose of Title I is to set forth clearly and in one place the basic merit principles which shall govern the Federal personnel system. These principles are made applicable to Executive agencies and all other Federal entities employing persons in the competitive service. In addition, prohibited personnel practices are expressly set forth, which, when engaged in, constitute a basis for disciplinary action against the responsible official(s). The responsibility and authority of the President and agency heads for assuring that personnel management in the Executive branch is based on and embodies the merit principles is stated. Finally, the ability of Congress to oversee the Federal personnel system is improved by specifically authorizing the General Accounting Office to act as its agent to audit and review the system.

### JUSTIFICATION

The way Federal managers select, motivate, develop, utilize, advance, and treat employees; the means by which equal employment opportunity is provided for all citizens; and the methods utilized to obtain compliance with standards of integrity and conduct and responsiveness to the public all have a major impact on the quality of Government services. Federal managers endeavor to provide equitable compensation to attract and retain highly qualified personnel and effective training to improve individual and organizational performance further contribute to the goal. To this end, personnel management under the Federal merit system is based on the concept that the Government and the Nation are best served by a corps of career employees safeguarded against improper political influences and personal favoritism and recruited, hired, advanced, and retained on the basis of individual ability and performance without regard to political affiliation, race, color, national origin, sex, marital status, age or handicapping condition. This further contemplates that employees who do not adequately perform, and who cannot or will not improve, be separated. These concepts are embodied in what are commonly referred to as the "merit principles."

While application of the merit principles in personnel management is implicit in the laws, Executive orders, rules and regulations for administration of the Federal personnel system, the only expression by Congress of the basic merit principles are those enumerated in section 2 of the Intergovernmental Personnel Act (IPA) of 1970 (84 Stat. 1909), relating to State and local governments. These principles equally apply to Federal personnel management. Accordingly, it is proposed that the merit principles enumerated in section 202 of Title I, which are an adaptation of the current IPA merit principle with more specific requirements for Federal personnel management, be

established by the statute as the basic merit principles for the Federal merit system.

Section 203 expressly recognizes that the President as the head of the Executive branch has the ultimate responsibility for effective Federal personnel management system and sets forth the means available to him to achieve this purpose.

The prohibited personnel practices enumerated in section 204 are not new; but they are in some instances the first expression of Congressional policy. They may all be traced to existing laws, Executive orders, rules, or regulations of the Civil Service Commission. As currently articulated, however, the prohibitions do not make clear that disciplinary action may be taken against culpable officials and employees; nor is the authority for investigating allegations of prohibited personnel practices and initiating disciplinary action as clear as it should be in all cases. These weaknesses and obscurities have hindered efforts to protect the merit system from abuse and account, at least in part, for the fact that despite significant efforts, results have been generally less than adequate in achieving either correction of abuses or disciplinary action against culpable officials and employees.

The Special Counsel located as an independent official within the Merit Systems Protection Board, is provided appropriate authority in other sections of this legislation to investigate allegations of prohibited personnel practices described in this section and to initiate, when necessary, disciplinary action against responsible officials and employees. Final decision in such cases will be made by the Merit Systems Protection Board.

Finally, section 205 has been set out specifically to recognize and to provide for Congressional oversight of the Federal personnel system and the role of the General Accounting Office shall exercise as the agent of Congress.

## TITLE II PROTECTION OF EMPLOYEE RIGHTS

### MERIT SYSTEMS PROTECTION BOARD

#### PURPOSE

The purpose of Sections 201 through 204, 207, and 208 of this title is to provide for improvements in the system for appointing and removing members of the Merit Systems Protection Board and certain other Board officials; to strengthen the Board's authorities; and to provide for the judicial review of the Board's decisions.

#### JUSTIFICATION

Among the effects which this proposed legislation would have are those related to the appointment, terms and removal of the three members who would head the Board. The three Commissioners who now head the Civil Service Commission are appointed for renewable six-year terms, but may be removed from this office by the President at any time and for virtually any reason. Under the system which we propose, the Board members would be appointed for nonrenewable seven year terms, and would be removable only for inefficiency, neglect of duty, misconduct, or malfeasance in office, with entitlement to a hearing under procedures determined at the discretion of the President. We believe the latter system is superior in that the Board members would gain increased independence; the responsibilities which the Board would have for adjudication of appeals and protecting merit systems makes the members' independence essential.

Another important effect this legislation would have is to grant subpoena power to Board members and certain members of their staff. The Civil Service Commission's inability to issue subpoenas has been a handicap in its adjudication of appeals and in conducting its investigations. The granting of subpoena power to the Board would enable the Board to obtain the testimony and evidence which is essential in adjudicating appeals and conducting investigations.

The legislation provides a statutory basis for the functions and authorities of the Office of Special Counsel. Under this legislation, the Special Counsel would be appointed by the President (subject to confirmation by the Senate) for a term of seven years, and would be authorized to investigate complaints concerning personnel practices prohibited by Executive order, rules, or section 204 of Title I of this bill.

The Special Counsel is provided the authority to initiate appropriate disciplinary action against Federal employees for knowingly and willfully engaging in prohibited personnel practices; this disciplinary action could include removal, demotion, debarment from Federal employment for up to five years, suspension, a fine of up to \$1,000, or reprimand as the circumstances of the case warrant. The final decision in such a case shall be made by the Board and the Board's decision be subject to judicial review. We believe the Special Counsel needs to have clear authority to take these actions if the Special Counsel is to function effectively in protecting merit systems and enforcing decisions and orders of the Board.

The proposed legislation also would provide for removal of the Board's Special Counsel only for inefficiency, neglect of duty, misconduct, or malfeasance in office, and only after notice and hearing. We believe these provisions are important in ensuring that the Special Counsel be given the opportunity to act with independence in protecting the merit system.

In addition, the draft legislation provides a statutory basis for the Special Counsel's handling of Federal employees' and citizens' complaints that personnel actions have been taken against Federal employees in reprisal for their lawful disclosure of information concerning specific violations of statutes. The Special Counsel is authorized to investigate these matters (using his subpoena power when appropriate); to refer violations of laws and regulations to agency heads and law enforcement officials; to initiate disciplinary action against persons responsible for retaliation of this nature; to stay geographic reassignments and other reprisal or retaliatory actions when appropriate; and to prescribe regulations needed to carry out these functions. We believe the need for protecting employees from this kind of reprisal is sufficiently important to warrant establishing by law the Special Counsel's functions and authorities in this area.

Another important change which would result from this legislation is the elimination of evidentiary hearings in certain appellate cases at the discretion of the appeals officer or administrative law judge. While there are many cases in which an evidentiary hearing can have an effect on the outcome of the appeal, we believe there also are many in which it has no effect (including some in which the essential facts are not disputed). For this reason, we believe appeals officers should be given the authority, in accordance with criteria set out in regulations, to determine whether an appeal may be adjudicated without a hearing.

Under the present system, Commission appellate offices process as separate cases similar appeals or complaints which are filed by different individuals, except when those individuals consent to combining the appeals and complaints for processing. Appellate offices also process separately more than one appeal or complaint received from the same individual. It is apparent, however, that cases involving the same or very similar facts or circumstances or issues can be processed more expeditiously and efficiently if they were combined for process. The legislation we have proposed provides the Board and its appeals officers with clear authority to take this action when it would not prejudice the parties.

The legislation eliminates the confusion which now exists concerning the appeal rights of an individual who is affected by an action appealable to the Commission and who alleges that discrimination was a factor in that action. Currently, the individual is asked to elect whether to have the entire matter decided in an appeal to the Commission or in a complaint of discrimination filed with the agency. The election process delays the adjudication of appeals and creates confusion for appellants and for agencies. Under the legislation, any allegation of discrimination raised in connection with a matter appealable to the Board shall be decided by the Board under appellate procedures applicable to the appealable matter.

The Commission currently does not have the authority to require agencies to pay the attorney fees of employees who prevail in their appeals. This system has the following two disadvantages:

- (1) Employees whose agencies have taken arbitrary and capricious actions against them may spend a considerable amount of money defending themselves against these actions and cannot be reimbursed for attorney fees upon prevailing in their appeals to the Commission; and
- (2) Individuals who have prevailed in their appeals or complaints and seek reimbursement for these fees must file civil actions against the Government in order to obtain a review of their requests for reimbursement.

The legislation remedies this problem by authorizing the Board members and hearing officials to require payment, by agencies which are losing parties to proceedings before the Board, of attorney fees to the employees who prevailed; provided that payment shall only be required when the Board or the hearing official determines that the circumstances warrant.



Under the legislation, individuals having entitlement to an appeal under the Board's jurisdiction have the alternative of electing referral of the matter for decision through arbitration procedures. Individuals electing the arbitration procedure waive their entitlement to an appeal before an appeals officer of the Board. Decisions of arbitrators under this alternative procedure are subject to reopening by the Board or at the request of the Office of Personnel Management for resolution of substantial questions of conflict with governing law, regulations, or policies.

A portion of this proposed legislation contains authority for enforcement of the Board's decisions. It provides that the Special Counsel may initiate disciplinary action against any officer or employee, except a Presidential appointee, who refuses or fails to comply with an order of the Board. (Such refusals or failures by Presidential appointees would be reported to the President.) We believe this enforcement authority will reinforce the integrity of the Board's decisions in the minds of the public.

Another portion of the proposed legislation concerns judicial review of decisions and orders of the Board. Employees who wish to challenge Commission decisions generally file their claims with U. S. District Courts. The large number of these courts has caused wide variations in the kinds of decisions which have been issued on the same or highly similar matters. We propose that this problem be remedied by providing that Board decisions and orders (other than those involving discrimination complaints and determinations concerning life and health insurance) be reviewable by the Court of Claims and U. S. Courts of Appeals, rather than by U. S. District Courts. (We would exclude discrimination complaint cases from this provision because complaints arising outside the Federal Government also are reviewable by U. S. District Courts, and we favor uniformity in the types of review given to these kinds of cases. Life and health insurance cases are reviewable in district courts by virtue of existing statute.)

The legislation also provides that the Court of Claims or U. S. Court of Appeals which receives a request for review of a Board decision or order would review the record to determine whether the decision was arbitrary, capricious, or not in accordance with law, and whether the procedures required by law and regulations were followed. The Board's decision would be considered conclusive when supported by substantial evidence. If the Court determined that additional evidence was necessary, it would remand the case to the Board for further processing.

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We favor these provisions because they would eliminate unnecessarily detailed judicial reviews of cases handled by the Board; because they would result in the establishment of uniform guidelines for reviews of these cases; because they would assign maximum responsibility for supplementing inadequate case records on the Board rather than on the courts; and because the review by Courts of Appeals which is proposed would provide for the increased finality of the Board's administrative decisions which is characteristic of decisions of other independent agencies.

The third important part of the proposed section on judicial review of Board decisions is the provision that, when the Director of the Office of Personnel Management disagrees with the Board's interpretation of a statute or regulation involving personnel matters within his or her jurisdiction, that official may request a review of the interpretation by the U.S. Court of Appeals for the District of Columbia. The granting of this petition would be discretionary with the court. We believe this provision sets up an orderly and workable method for resolving major disputes between the Office of Personnel Management and the Board.

#### PERFORMANCE APPRAISAL

##### PURPOSE

The purpose of Section 205 is to provide for new systems of appraising employee work performance. The principal changes in subchapter I of chapter 43 of title 5, United States Code are the:

- abolishment of present requirements for summary adjective ratings and appeals of performance ratings;
- establishment of the requirement that performance appraisals are to be used as a basis for developing, rewarding, reassigning, demoting, promoting, and retaining or separating employees.
- establishment of a special procedure for taking actions based on unacceptable performance.

# JUSTIFICATION

Present performance appraisal procedures and their results are the source of frequent complaints by both manager and employees. Some reasons for complaint involve provisions of the Performance Rating Act of 1950 as codified in chapter 43 of title 5, U.S. code. The first of these provisions relates to the requirement for assignment of summary adjective ratings, a second is the procedure for appeal of ratings, and a third is that the ratings have little meaning since they are not used as the basis for administrative action.

The principal motivating force leading to the Act of 1950 was dissatisfaction with the complexities of the then existing system resulting from the number of rating levels (5) and the inability to make meaningful distinctions among levels of performance. Thus, it was the intent of Congress that by combining the three middle rating levels most employees would fall into the "Satisfactory" category. This intent is further evidenced by the deliberate selection of an extremely high criterion for an "Outstanding" rating. At the time the Act of 1950 was passed, an employee's performance rating automatically determined entitlement to a within-grade increase, to retention on the job and in the Federal service, and extra credit for RIF purposes.

Since 1950 a number of changes have occurred which have diminished the importance of the summary adjective performance rating. Entitlement to within-grade increases for General Schedule employees is now based on a separate acceptable level of competence decision. As a result of court decisions, an agency must follow adverse action procedures if an employee with an Unsatisfactory rating is to be reduced in grade, rank, or pay or removed from the service. These two changes greatly diminished the importance of the summary adjective rating. In addition, few Outstanding ratings are assigned because the statutory criterion requires outstanding performance in all aspects of the job, a criterion that extremely few individuals can meet. Thus, the rating serves little practical purpose. Another major weakness is that the Satisfactory rating encompasses not only full satisfactory and superior performance, but also marginal performance.

The Unsatisfactory rating is little-used because it is duplicative, expensive and time-consuming to go through the process of assigning an Unsatisfactory rating, taking an adverse action, and possibly having two separate appeals and even conflicting decisions. The need for the performance rating appeal procedure has largely been obviated by the determination that an adverse action based on performance must be taken

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under adverse action procedures and by the extension of adverse action protections to non-preference eligibles in the competitive service. The new special procedures for taking adverse action and for appealing demotions or separations taken because of unacceptable performance are designed to simplify and streamline the present time-consuming multiple procedures while preserving the requirements of due process for the employees. The new procedures are easier and quicker for both supervisors and employees to understand and use.

For these reasons, it is proposed that the requirement for assigning summary adjective ratings and the provision for appeals of ratings be repealed.

A second major problem with performance appraisals today concerns the number of separate statutory and regulatory requirements that employees' performance be considered in making decisions for a variety of purposes (promotion, training, incentive awards, within-grade increases, retention on the job). These requirements have not been interrelated. In addition, these requirements may involve conflicting assessments including:

- past performance in the present job (performance rating, acceptable level of competence, QSI, retention on job, credit for RIF, awards, training, and sometimes promotion);
- projected performance in the same job (QSI, training); and,
- preparation or anticipated performance in a different job (promotion, reassignment, training, and sometimes adverse action decisions).

Therefore, it is proposed that appraisals of performance for all purposes be made within a single cohesive framework. This proposal would require agencies to establish one or more performance appraisal systems according to their needs, but permits them to continue to determine how appraisals will be made, i.e., for several purposes in a single appraisal or for difference purposes at different times, and what type of system or systems will be established.

Although the proposal retains a larger degree of authority for agencies to determine the purposes for which appraisals are to be used, it would require that performance appraisals be a basis for decisions to reward, promote, and retain employees. Under the present system, employees and managers often perceive that there is little difference in rewards between employees who are barely doing enough to retain their jobs and

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employees whose performance is fully satisfactory or exceeds requirements. A key element in rewarding employees in the proposed Professional and Administrative Service according to the level of their performance is the proposed authority to grant merit pay increases and bonuses. Thus, pay would provide motivation in two ways: increases are given to employees whose performance exceeds established requirements and increases are withheld from employees whose performance fails to meet or only minimally meets established standards.

Installing and monitoring improved procedures for appraising performance and taking action based on appraisal will cost much more than many agencies are spending now on performance rating programs. Funding estimates submitted separately indicate that this is so. Improved efficiency in personnel management, increased productivity, and improved service to the public are expected benefits which should more than balance the additional investment, thus resulting in a more cost-effective personnel system.

#### ADVERSE ACTIONS

##### PURPOSE

The purpose of Section 206 is to change adverse action coverage to provide for statutory adverse action rights for non-preference eligibles in the competitive service, to authorize the Office of Personnel Management to extend coverage to positions administratively excepted from the competitive service, and to redefine the actions covered by the adverse action procedures.

##### JUSTIFICATION

During recent years the entire adverse action and appeals process for Federal employees has been the subject of a great deal of interest and concern on the part of employees and agencies, the Congress, labor and veterans organizations, bar associations, the courts and the public.

Through the Personnel Management Project the Civil Service Commission undertook an extensive review of the adverse action and appeals systems.

This review resulted in the identification of a number of problems and dissatisfactions with the systems, proposed actions to revise and improve them by administrative action through Commission regulation, and the preparation of this legislative proposal.

One significant change proposed is to extend to nonpreference eligibles in the competitive service the same adverse action procedures and appeal rights as those of preference eligible employees. These rights have been established as a basic right of nonveterans but they flow from Executive order rather than from statute. It is appropriate that these rights be given a statutory basis.

A second proposed change relating to employee coverage is to authorize the Office of Personnel Management to extend adverse action coverage to positions or groups of positions excepted from the competitive service by regulation of the Office of Personnel Management. Most positions are now administratively excepted because competitive examinations cannot be administered to applicants. Only preference eligibles are currently entitled to adverse action coverage. However, many positions in the current Schedules A and B are career positions in the sense that the employees spend their careers in these jobs. It is therefore appropriate that the Office of Personnel Management be authorized to extend adverse action and appeal rights in removals, suspensions for more than 30 days, reductions in grade or pay, and furloughs to positions which meet criteria it establishes for granting these rights.

Several important changes are proposed in the definition of "adverse action". First is that the term "reduction in rank" now contained in the statute should be changed to "reduction in grade". In 1944, when the Veterans' Preference Act became law, thousands of positions were not covered by any position classification system. Consequently, when there was no reduction in compensation, it was necessary to look to something else, for example, the individual's relative standing in the agency's organizational structure, to determine whether an adverse action had been taken. However, this situation no longer exists. We believe it would now be more appropriate to equate "rank" with "grade". As an important byproduct, this change would result in a closer parallel between the protections to which the employee is entitled and the severity of the action taken. Thus, the full range of rights would only be extended to an employee when a reduction in grade has occurred. This would assure that agencies have the flexibility to assign employees to positions and duties where they are needed without the prospect of having to take an adverse action against an employee when the job title or duties have changed but the grade has not.

Other less significant changes include the reorganization of existing provisions of chapter 75 to replace the present archaic structure with a more logical progression of provisions, a redefinition of "preference eligible" to exclude from coverage of adverse action protections and appeal rights those employees who are in positions of a confidential or policy-determining character; and a proposed new statutory right to representation after a removal, suspension for more than 30 days, or reduction in grade or pay has been proposed.

We do not anticipate that these proposed changes will result in additional costs.

### TITLE III STAFFING

#### PURPOSE

The purpose of this title is to improve the system for examining, selecting, and retaining Federal employees. The Federal Personnel Management Project, part of the President's overall reorganization effort, made a top-to-bottom study of personnel policies, procedures, and organizations. Working together, the Office of Management and Budget and the Civil Service Commission sought the recommendations of Federal agencies, interest groups, businesses, unions, and the general public. As one indicator of the scope of the study, nearly 7,000 persons spoke their views at public hearings and other meetings across the country. As a result, the Project proposed numerous improvements to speed examining and placement, provide fairer treatment for all applicants and employees, update the merit system, strengthen management, raise productivity, and improve the public service. To bring these improvements about requires consideration of and proposals to change many provisions of law.

In order to improve Federal staffing operations, it is necessary to change certain sections of title 5 of the United States Code which, in their present form, are no longer appropriate or desirable.

The specific purposes of this title are to:

- give selecting officials greater flexibility by expanding the Rule of Three, repealing apportionment and members-of-family restrictions, and requiring a probationary period for new supervisors.

- adjust the rights of all job candidates to current needs by limiting the period preference may be used in appointment and reduction in force for nondisabled veterans.

- upgrade employment systems by delegating examining authority to agencies, authorizing voluntary retirements in reorganizations, providing reemployment training to employees about to be separated by reduction in force, and permitting acceptance of unpaid student services.

- extend until September 30, 1980, the authority of agencies to give certain Vietnam era veterans Veterans' Readjustment Appointments which lead to career employment without competitive examination.

JUSTIFICATION

Veteran Preference (5 U.S.C. 2108, 3303a, 3305, 3309, 3313, 3317, and 3318)

Since many staffing procedures were established through veteran preference legislation, some of the proposed changes affect the manner in which veteran preference would be applied in civil service examining, placement, and retention programs. The legislation will not eliminate veteran preference, but it will place particular emphasis on assistance for those veterans who most need it, such as the disabled Vietnam era veterans, and other recently discharged veterans. It will restrict preference for those who are no longer in need of assistance, such as for most nondisabled military retirees and others who are able to compete successfully for Federal jobs and benefits.

The law now gives unlimited preference to veterans in many areas of Federal employment. In civil service examinations, nondisabled veterans have 5 points added to their passing scores. Disabled veterans and spouses, widows, widowers, and mothers of certain disabled and deceased veterans receive 10 points. Compensably disabled veterans also go to the top of registers ahead of other competitors, except for professional and scientific positions at grade GS-9 and higher. In appointments, selecting officials are given the top three eligibles from whom to choose and may not pass over a preference eligible to appoint a nonpreference eligible lower on the list unless the Civil Service Commission agrees that the agency's reasons for passing over the veteran are sufficient and approves the action. In retention, veterans have the right to be retained over competing nonveterans in a reduction in force. Various other employment rights and privileges have been given to veterans by law. These include exemption from apportionment and members-of-family restrictions, credit for military experience in the way which is most beneficial to them, and protections in removal and other adverse actions.

Veteran preference has a long history which is rooted in the concept that our young people who are called upon to serve their country in times of crisis deserve an extra measure of assistance in helping them readjust to civilian life. In particular, this includes giving them preference for Federal civilian employment.

The character of military service, the profile of veterans themselves, and the conditions which led to the enactment of the Veterans' Preference Act have changed dramatically since World War II. Additionally, the Act has been amended so many times that even the nature of preference has changed. In 1966, for example, preference was extended for the first time to those who served exclusively during peacetime. It was not until October 1976, following introduction of the all volunteer army, that the law was changed to eliminate preference for peacetime service.



A particular problem with the preference laws is that they have continued to expand in coverage to such an extent that their original intent has been all but lost. Instead of serving as a positive force to assist those to whom the Nation owes the greatest debt of gratitude, such as disabled veterans and those returning from areas of conflict, preference has been weakened by awarding it to large numbers of military retirees, most of whom have the necessary skills to enable them to compete successfully without additional help, and to persons who spent as little as 6 months on active duty during peacetime. In addition to this diminution of the advantages of preference for veterans who do need help, veteran preference laws have presented an even greater barrier to employment opportunities for nonveterans.

The proposed legislation is designed to strengthen the effect of veteran preference for those veterans who need and deserve special assistance. It would change those aspects of the law which (1) are inconsistent with the original purpose of veteran preference, (2) are not the best method to help those veterans who need help the most, or (3) have an adverse impact on equal employment opportunity for nonveterans. None of the proposed changes in preference would be effective until October 1, 1980.

The objective of employment preference within a merit system is to place persons identified as being at a disadvantage in the competitive process on an equal footing with others. Granting unlimited lifetime preference regardless of the need for special employment assistance works to the disadvantage of those truly in need of such assistance, as well as those outside the group. Under present law, for example, in competitive examinations the same number of preference points (5) are added to the earned rating of a retired member of the Armed Forces whose military experience provided knowledges and skills which are related and fully creditable toward Federal civilian employment as are added to the rating of a recently discharged veteran whose civilian education and regular lifestyle had been interrupted by military service. Under the proposed legislation, preference in examinations would be eliminated for nondisabled retired veterans who attained the rank of major or above because they typically gained valuable civilian-related job experience in the service and do not need additional assistance.

The proposed legislation, by limiting preference in civil service examinations for other nondisabled veterans to the 10-year period following separation from military service, would focus the special hiring assistance on the critical period when the veteran is adjusting to civilian life. Nondisabled retired veterans below major would be entitled to preference during the 3-year period after leaving the service. The period is briefer since they are less likely to need special help in securing employment.

Congress recently reexamined the basis of granting preference when it passed Public Law 94-502. This law ended peacetime preference for veterans entering military service after October 14, 1976. It received widespread support as a positive step toward providing equal opportunity to persons not entitled to veteran preference.

In recent years the Federal Government has continued to exceed established goals for hiring and training Vietnam era veterans, particularly those who are disabled. It is vital that additional efforts be devoted to the employment needs of these veterans. The Administration fully supports special assistance for disabled veterans and those with significant readjustment problems, such as young minimally skilled veterans. To meet their needs, we propose an amendment to extend until September 30, 1980, the time period when Vietnam era veterans may receive Veterans' Readjustment Appointments (VRA's). Under this special appointing authority, Federal agencies may hire, without competitive examination, returning veterans with no more than 14 years of education for jobs up to grade GS-5 or the equivalent until June 30, 1978. Since 1972 over 100,000 veterans entered the Federal service through that authority alone. The appointment provides for conversion to career status after 2 years of successful job performance. Present law limits eligibility for VRA appointments to those who apply within a year of the date of separation from military service. Our proposal would not only extend the time period for agencies to make VRA appointments, but would also authorize such appointments for all Vietnam era veterans, including those whose 1 year of eligibility had expired, provided they meet the basic requirements and were either qualified for a VRA appointment as of April 9, 1970, or have been separated from military service on or after that date. The amendment would make a major contribution to our national effort to reduce the high rate of unemployment among Vietnam era veterans and would provide additional opportunities to veterans unable to obtain VRA appointments because of labor market conditions.

The composition of the labor force in our Nation has changed since the Veterans' Preference Act was approved in 1944. While the merit system has always been open to all groups and substantial progress has been made in equal employment opportunity for all of our citizens, further efforts are needed. The Federal Government as an employer needs to take into account the rights and rising expectations of other groups of citizens seeking employment such as minorities, women, the handicapped and the economically and educationally disadvantaged. Because most of the procedures and concepts by which the civil service examining system operates have been set forth in statute, any substantive review of that system must necessarily include an examination of the impact of those laws on all of our citizens.

Placing the administrative procedures of 1944, such as individual numerical ratings and the Rule of Three, into law has had the effect of preventing the Federal competitive service from developing the newer and more flexible procedures for measuring and selecting candidates in use today among Federal agencies with independent merit systems and some State and local governments. We have been unable to use any of the modern hiring methods of private business or other public organizations.

Preference still plays a very important part in getting a Federal job. For example, veterans are currently at the top of approximately 75 percent of Civil Service Commission registers. They comprise about 50 percent of the Federal work force. Commission statistics on veteran selections from registers indicate that overall, veterans accounted for more than 30 percent of new hires in recent years. There are differences according to the type of job being filled in the proportion of positions filled by veterans compared to nonveterans. For example, approximately 65 percent of the persons selected from Accountant/Auditor and Computer Specialist registers during Fiscal Year 1976 were preference eligibles, while only about half of that proportion were appointed from Life Sciences registers. Veteran selections from the Professional and Administrative Career Examination (PACE) have averaged roughly 30 percent in recent years.

Currently, a Federal agency desiring to fill a job competitively is expressly bound by law to consider only the top three candidates on a civil service list of eligibles. This requirement is commonly known as the Rule of Three, and the top three candidates are represented as the "best qualified" for the job. While in a popular examination there may be a hundred candidates on the register with the same numerical rating, the appointing officer is prohibited from considering more than three eligibles at a time for a specific vacancy. Although it can be demonstrated that there are significant differences in potential for successful job performance based on substantial variations in examination scores attained by competitors, one would be hard pressed to show that differences of 1 or 2 points are significant. Examining offices are now required by law to make overly fine distinctions among applicants with virtually identical backgrounds when in fact no measurable differences exist. This is clearly a disservice to all candidates, veterans and nonveterans alike. Under these conditions alternate rating procedures, such as category rating (grouping together of all eligibles with relatively "equal" qualifications into broad classes, e.g., "outstanding," "well-qualified," and "qualified"), which permit selection from a larger number of eligibles, rather than strictly on the basis of individual scores, might be more appropriate. Federal agencies have expressed almost unanimous concern about inflexibilities imposed on their managers by veteran preference laws, and many have suggested using alternate ranking procedures for Federal job applicants.

Many State and local governments, recognizing the need to update employment practices, including the Rule of Three and veteran preference, have changed their public employment systems to permit appointing officials a wider range of choice among candidates and to limit assignment of examination "points" and other employment privileges to only veterans in need. Less than half the States continue to use the Rule of Three, and, of these, several permit alternatives.

The proposed legislation replaces the absolute Rule of Three requirement with a rule of seven and permits the Office of Personnel Management to prescribe other referral procedures--for example, category rating--when they are determined to be effective in examining applicants for Federal jobs. When individual numerical ratings are not used, the equivalent of 5 or 10 point preference would be granted under the ranking system used. For example, if a category rating

system were used, 5-point preference eligibles could be placed at the top of their qualifications category for consideration before nonveterans in the category.

The present statutory prohibition against passing over a veteran to select a nonveteran would be retained. The Office of Personnel Management would acquire the statutory authority of the Commission to permit passing over a veteran when justified by the agency.

Under our proposal, nondisabled veterans would also be able to reopen closed examinations, a privilege which they do not presently have. Since 1944, disabled veterans and certain spouses, widows, and mothers of veterans have had a statutory right to apply for examinations, after the closing date for receipt of applications has passed, for any position to which a career appointment has been made within the preceding 3 years. To permit the nondisabled veteran maximum use of veteran preference during the proposed 10-year period after discharge, this revision would extend the right to reopen examinations to all preference eligibles. To improve the veteran's chances for appointment and to simplify administration, we propose changing the criterion from appointment within the last 3 years to existence of an appropriate list of eligibles.

The General Accounting Office (GAO) recently completed a study of the impact of veteran preference (and apportionment) on equal employment opportunity. In a September 29, 1977, report to the Congress entitled, Conflicting Congressional Policies: Veterans' Preference and Apportionment vs. Equal Employment Opportunity, the Comptroller General concluded that while veteran preference has been effective in rewarding veterans for their military service, it "severely limits" Federal job opportunities for nonveterans, and "particularly diminishes the employment chances of women since they seldom have veteran status." The GAO examined 44 Civil Service Commission registers of eligibles around the country to assess the impact of veteran preference on employment opportunities for nonveterans. Particular attention was devoted to the potential impact of preference on minority and women applicants. Since minority group status was not indicated on the registers which were reviewed, GAO's analysis centered primarily on disadvantages suffered by women.

The report indicated that while wide variations were noted according to the particular examination involved, opportunities for women to be certified to Federal jobs would have increased on 36 of the 44 registers examined if veteran preference had not been in effect. GAO based its determination of the potentially increased "certifiability" of women on scores which were generally required at that time for referral on a Commission certificate. In light of Rule

of Three restrictions, which GAO did not apply, the numbers of women who could actually have been considered for employment, i.e., who would have been "within reach" for selection, would have been even smaller. Several examples involving nonveteran women with perfect (100) or near perfect earned examination ratings were cited. In some cases, such individuals had virtually no chance of referral because of large numbers of preference eligibles with equal or lower earned ratings but substantially higher register standing because of veteran preference. In submitting the report, GAO requested that Congress seriously consider modifications to existing veteran preference laws if reduction of adverse impact is desired.

Veteran preference legislation covers the gamut of Federal employment practices from initial filing privileges in a competitive examination to establishment of levels of employees competing for job retention in a reduction in force. The intent of the proposed legislation is to free the Federal personnel system from the very specific constraints written into law over 30 years ago and from the subsequent extension of preference beyond its original purposes. These changes would pinpoint assistance efforts for those who most need and deserve it while at the same time providing more equitable employment opportunities to other Americans.

#### Acceptance of Volunteer Service (5 U.S.C. 3111)

This is a new provision necessary to authorize an exception for unpaid student volunteers to the general statutory prohibition on Federal agencies using services of volunteers.

From time to time, various groups advocate providing unpaid Federal work opportunities to high school, college, graduate, or professional school students. Because of the general prohibition, agencies may only accept such services when expressly authorized by statute. While Congress has approved some programs--e.g., Interior's "Volunteers in the Parks"--the process is time-consuming for Congress and agencies. A general approval, providing certain conditions are met, would seem a better solution.

The authority we propose would permit Federal agencies, subject to regulations of the Office of Personnel Management, to accept the services of students enrolled at least half-time in a high school, college, graduate, or professional school. The section includes certain provisions to assure effective arrangements--tasks assigned must be part of an organized program to provide worthwhile work exposure for volunteers and displacement of Federal employees is prohibited.

Volunteers would not be treated as Federal employees, except for injury compensation and tort claims coverage.

Repeal of Apportionment (5 U.S.C. 3306)

The purpose of this proposal is to eliminate the apportionment requirement for appointment to positions in the departmental service in the District of Columbia.

The apportionment law goes back to the very beginning of the civil service system. The idea behind it seemed laudable. Government jobs in the Nation's Capital should not be the special preserve of people from nearby areas. Rather these jobs should be made available to persons from all sections of the country. However, what started out as a well-intentioned idea has not worked in actual practice. Moreover, the dramatic changes in the Federal service in the number and nature of jobs and their location require rethinking the rationale on which apportionment is based.

When the apportionment law was passed as part of the original Civil Service Act of 1883, 40 percent of competitive service jobs were concentrated in Washington, D.C. Initially there were only about 14,000 jobs in the competitive service nationwide. Today less than 15 percent of the approximately 1.8 million jobs in the competitive service are in the Washington metropolitan area. And of these, apportionment only applies to about 15 percent. It does not apply to veterans, excepted service jobs, and shortage categories.

Even for the jobs where it does apply, apportionment has not resulted in the kind of distribution intended. Fourteen States and the District of Columbia are considered in excess of their quotas while the rest are in arrears. The States in excess range from nearby Maryland, Virginia, and North Carolina, to Nebraska, South Dakota, and Vermont. Those in arrears range from nearby New Jersey to Hawaii. The relative balance among the States, territories, and the District of Columbia has been basically maintained for the past 25 years--an indication that the requirement has not worked as intended.

This does not mean, however, that residents of States in arrears do not participate fully in Federal employment. For example, California, although in arrears for apportionment purposes, nevertheless has some 300,000 Federal jobs within the State. There are many responsible positions among the 85 percent of Federal jobs outside of Washington, with opportunities for meaningful participation in the making and administration of public policy.

Agency emphasis on rotational assignments and field experience for Washington jobs is only one factor contributing to the geographical mix of Federal employees in the metropolitan Washington area. Other factors are wide-ranging recruiting which attracts people from all over the country and nationwide competitive examining which provides opportunities to applicants from all areas.

Instead of a positive impact, apportionment has had a negative one from just about every standpoint. Because it requires preference to be given to persons from States in arrears, its main effect has been to deny employment to better qualified candidates simply because they happen to come from the wrong place. Because veterans are exempt from the requirement, it has a disproportionate impact on women. Aside from working an injustice against these individuals, apportionment is contrary to the basic principles of merit which underlie the Federal personnel system.

In 1973, the General Accounting Office conducted a review of the apportionment requirement to assess its effect on Federal hiring. In its report, dated November 30, 1973, it concluded that "the apportionment requirement should be eliminated so that agencies and departments will no longer be required to comply with a requirement that has outlived its usefulness." All 15 departments and agencies GAO contacted favored eliminating the requirement.

A provision which results in a minimally qualified eligible with a rating of 70 being placed ahead of an individual with a rating of 100, solely on the basis of their respective residences is completely out of harmony with fairness and equality to our citizens and is costly to the Government in lowered quality and productivity.

#### Repeal of Members of Family Provision (5 U.S.C. 3319)

The "members of family" requirement is a restriction on the appointment to Government positions of more than two members of the same family. It applies only to career or career-conditional appointments. It has been interpreted by the Attorney General to cover only those who live under the same roof with the head of the family as part of his immediate family unit. Persons entitled to veteran preference are exempted from its provisions.

The original aim of the "members of family" provision, which was part of the Civil Service Act of 1883, was to strike against the nepotism practices common in the Federal service under the spoils system. Congress apparently wanted to make sure that persons on the Federal payroll would not use influence to get other members of their families on the rolls.

In light of conditions today, the Commission considers the "members of family" provision an antimerit factor that is an injustice to the relatives of Federal employees and an unnecessary impediment to effective recruiting and staffing. It is, in our view, an arbitrary, discriminatory restriction which no longer serves any useful purpose. The main effect of this restriction in the Federal Government is to bar the entrance into the competitive service of a number of young people, many of whom are qualified for employment in lines of work for which the Government has a serious need.

Enacted principally as a measure to prohibit nepotism in 1883, the members of family restriction has become obsolete. Now, in addition to the safeguard provided by the merit system itself, a strong antinepotism law specifically prohibits what the members of family legislation attempted to do indirectly.

In keeping with these principles, the Commission believes that the families of Federal employees should have as much right to compete for Federal jobs as anyone else. It is contrary to the concept of equal opportunity to disqualify for Federal employment a highly qualified and potentially valuable employee on the arbitrary and irrational grounds that he or she happens to reside in the parents' home.

#### Probationary Period for Supervisors (5 U.S.C. 3321)

Present law protects employees who have completed a probationary or trial period from removal, suspension, or similar action without formal adversary proceedings including advance written notification of reasons and opportunity to respond. The protection applies regardless of the nature or level of work assigned following completion of probation after initial appointment.

The key role of the manager or supervisor in an organization does not require elaboration. Under our civil service reform recommendations that role would be enlarged. Under current law, any effort to remove an unsuccessful supervisor is both time-consuming and difficult, and can stigmatize an employee who may have been an excellent individual performer, but who lacked supervisory skills. Because of the difficulties in attempting to predict supervisory potential, we propose to add a requirement for a probationary period for the first managerial or supervisory assignment in order to permit evaluation through on-the-job performance. Related changes in employee appeals statutes are proposed elsewhere to eliminate formal appeal protections from the removal of an employee during a probationary supervisory assignment. We provide for the return of those employees to the same or to an equivalent position to that last held.



Retention Preference in Reduction in Force (5 U.S.C. 3501, 3502, and 3503)

The present Administration has publicly pledged to make the Federal Government both more effective and more efficient by reorganizing some of the agencies which perform the work of the Government. In the past year, the system which determines the retention rights of civil service employees has been the subject of considerable interest and concern on the part of the President, agency managers, the Congress, and the public.

The law requires the Commission's reduction in force (RIF) regulations to give consideration to four retention factors: (1) tenure of employment; (2) military preference; (3) length of service; and (4) efficiency or performance ratings. Under the present RIF system, an employee competing for a position is first placed into one of three groups on the basis of his/her tenure of employment. Within these groups, each competing employee is next placed into one of two subgroups, solely dependent upon his/her entitlement to veteran preference. Finally, each competing employee is ranked within the subgroup on the basis of a service date derived from his/her length of service and performance rating. Since almost all employees are rated satisfactory, performance rating has little effect on the procedure. Within each of the three tenure groups, a preference eligible employee has absolute retention superiority over a nonpreference employee.

Under this proposal only a disabled veteran (or certain survivors of a veteran) would retain permanent retention superiority over a non-preference eligible employee within a RIF tenure group. Other veterans would retain absolute retention superiority over a non-preference eligible employee within a RIF tenure group only for a 3-year period. This period parallels the 3-year "conditional" employment period leading to career appointment.

Veterans now comprise about 50 percent of the Federal civil service, and of that number, approximately 98 percent are male. Furthermore, minority veterans comprise only 9 percent of the total Federal employment. Because all veterans enjoy permanent retention superiority within RIF tenure groups under the present retention system, a situation requiring the use of the Commission's RIF regulations tends to result in a disproportionate number of white male veterans being retained over women and minority members of the work force. The proposed legislation would reduce this problem by limiting absolute preference to those veterans who are entitled to some assistance during a 3-year adjustment period, and to the 4.7 percent of the veterans who are considered disabled and should continue to benefit from some form of permanent preference.

The present RIF system for Federal civil service employees was originally approved as part of the Veterans' Preference Act of 1944. The adverse impact of RIF actions upon Federal employees has gradually been softened by the approval of several key pieces of legislation, such as those providing that retained pay and severance pay may be authorized to certain employees adversely affected by RIF actions. The present Administration is similarly concerned

that Federal employees may be adversely affected by the forthcoming reorganization plans and has initiated its own legislative and administrative proposals to eliminate (or at least to minimize) any hardships that its reorganization proposals may cause Federal employees. For example, the Administration has submitted a legislative proposal which, in part, would permit civil service employees faced with demotion because of reorganization to retain their pay and grade. In turn, the Administration is working toward improving Federal productivity and efficiency by developing a new reduction-in-force system for greater emphasis on individual job performance in determining employee retention rights. The Administration believes this proposal to modify veteran preference in RIF would assist it in developing an improved system of employee retention rights for use in carrying out its reorganization plans.

The following changes are also proposed:

- addition of 5 years of service credit in computing the length of service for nondisabled veterans, regardless of actual length of military service, once they have completed the 3-year period protected by retention preference. In this way, a recognition for military service would continue even after a veteran advances from career-conditional to career tenure.
- update of present law to provide that a preference eligible whose performance appraisal meets a standard of adequacy is entitled to retention ahead of other nonpreference competing employees. This would eliminate obsolete references to efficiency rating categories and conform to changes proposed in chapter 43 of title 5.
- expansion, in the interest of equity, of the protection for preference employees to all competing employees to accompany their function if it is transferred.

#### Voluntary Retirement in Major Reorganizations (5 U.S.C. 8336)

This section would permit agencies to ask the Office of Personnel Management for authority to permit eligible employees to retire as a first step in partially avoiding the massive reduction-in-force actions which could result from any extensive reorganization of the Federal Government. This section would permit eligible employees to voluntarily retire before they are affected by a reorganization and thus reduce the disruptive effects of RIF actions upon both their individual agency as well as their local community.

Extension of the early retirement authority to reorganization situations should not result in any significant increase in the unfunded liability of the Civil Service Retirement System. The Commission is likely to receive about the same number of early retirements in an agency reorganization or retrenchment situation whether they are processed under the involuntary separation provisions or the early optional retirement authority. The Civil Service Retirement System has long assumed an

expected percentage of early retirements following involuntary separations each year in determining the normal cost of retirement benefits and it has not yet been necessary to change this assumption as a result of amending the law to permit early retirements following voluntary separations in major reductions in force. Nor will the assumption necessarily be changed if the retirement law is amended to permit early retirements following voluntary separations in agency reorganizations.

Since 1922, various provisions in the retirement law for early retirement, whether based on involuntary or voluntary separations, have served the Government and the country well as a major instrument of personnel policy to alleviate the harsh effects of reduction in force in agency reorganization and retrenchment situations. In particular, the authority for such early retirements was widely and effectively used (1) during the depression of the 1930's to encourage retirements for general economic reasons; (2) in the mid-forties to ease the post-World War II cutback in Federal employment; and (3) in the early 1970's to ease the post-Vietnam War cutback in Federal employment. While the number of such early retirements peaked during those periods, the numbers of such retirements returned to normal levels following such peaks. Therefore, in the long run, the cost of early retirements under the Civil Service Retirement System is fully accounted for in determining the normal cost of the system. Normal cost is the average percentage of pay required to be set aside, invested and earning interest, throughout the total careers of a group of new entrants in order to pay benefits to them and their survivors. The normal cost of the system is about 14 percent of payroll. Employees and the Government as employer each contribute 7 percent of payroll to cover this normal cost.

Further, the additional cost of an early retirement vis-a-vis the cost of normal optional retirement is not particularly great. The annuity does have to be paid earlier than would otherwise be the case in a normal optional retirement; however, it is reduced by 2 percent a year for each year the retiree is under age 55, and is therefore paid at a lesser rate.

#### Training For Employees About To Be Separated (5 U.S.C. 4103)

This amendment would authorize an agency to train its employees, who would otherwise be separated because of reduction-in-force actions, for placement in another agency (in the same or a different occupation). There are three principal benefits to the Government from this provision. First it will encourage and promote a dedicated and competent career service. Second, the Government will be able to retain employees who have proven their ability. Third, the Government will avoid the cost of severance pay (approximately \$7,000 per employee). The proposal is consistent with the President's commitment (Presidential Memorandum of August 12, 1977) to minimize the hardship to employees caused by reorganization.

Repeal or Amendment of Certain Central Personnel Management Controls  
(5 U.S.C. 1104, 1105, 3326, and 5723)

Over the years, various statutes have placed sole authority in the Commission for conducting certain personnel operations or for approving specific agency personnel actions. Such requirements often become the basis for delays in hiring, complex administrative procedures, excessive cost, and unnecessary paperwork. In view of other powers vested in agency heads and authority exercised by their private business counterparts, such controls seem incongruous. In order to permit agency managers to evaluate job candidates and to take various personnel actions, we propose to amend or repeal various statutory limitations to allow delegation of authority and responsibility to them. To protect against possible misuse of authority, agency performance would be monitored and corrective action taken under periodic audits, performance agreements, and Office of Personnel Management oversight. Any prohibited personnel practices violations could be investigated and prosecuted by the Special Counsel for the Merit Systems Protection Board.

As envisioned, the Office of Personnel Management would delegate examining and other personnel management authorities to agencies on an individual basis, in accordance with their abilities and resources. Delegations would be carried out through a written performance agreement between an agency and the Office of Personnel Management which would specify required levels of agency performance; conditions for internal redelegation and for employee organization negotiability; reporting, review, and other oversight controls; and grounds for revocation, suspension, or modification of the authority.

The specific authorities to be changed are:

- examining through boards of examiners located at agencies. Since boards are agents of the Commission, the use of boards to conduct examinations for agencies would not be a full delegation of examining responsibility to agencies. To replace the board-of-examiner mechanism, we propose a provision to permit the Office of Personnel Management, subject to delegation from the President, to delegate the function directly to agencies. The provision also permits delegation of other personnel management functions of the President or of the Office of Personnel Management to agencies. Erroneous actions taken by an agency under such a delegation would be subject to an order by the Office of Personnel Management to cancel actions, including appointments, or to take other corrective measures.
- that appointment of a military retiree to a DoD civilian job within 180 days after retirement requires authorization by the Secretary concerned and Commission approval. Need for Commission approval would be eliminated.
- that an agency may pay travel and transportation expenses of a new appointee to a position for which the Commission finds there is a manpower shortage. The proposal would remove the present statutory restriction on delegating authority to agencies to make a manpower shortage determination. Agency use of such authority as might be delegated could be controlled through regulations.

## TITLE IV SENIOR EXECUTIVE SERVICE

### PURPOSE

The purpose of this title is to amend title 5 of the U.S. Code to establish a Senior Executive Service; to provide for the conversion of positions to this new Service; and to provide for the voluntary conversion of the incumbents of these positions or the retention of their current employment status and conditions if they so choose.

### JUSTIFICATION

The greatest asset and strength of our Government is its top leadership. Federal agencies spend over \$400,000,000,000 per year and employ over 2,400,000 full-time employees. The United States Government is the largest employer in the nation. Its programs are far-reaching, complex, and extremely varied. They must be conducted with extremely great sensitivity to conflicting interests and under constant public and media attention, for they literally touch every citizen. To meet this great responsibility requires strong leadership which can respond to important events, achieve Presidential and Congressional goals, and simultaneously ensure the soundest management of Government programs and services.

Over the 30 year period during which the existing system for managing executive personnel has evolved, a number of very serious problems have developed. Solving these problems is, in essence, the justification for a systems change. The following discussion explains the impact of the proposed Senior Executive Service on the current system.

#### Number of Executives Needed

Since 1947 when the first "supergrade" positions were authorized, executive strength has grown from 45 to over 7,000 (excluding Foreign Service, Tennessee Valley Authority, and some other groups wholly excluded from the competitive service). At the same time that the Congress rigidly controls approximately 3,000 so-called "quota" spaces, it exercises no control over the "non-quota" spaces (essentially scientific managers), which have increased almost ten-fold since 1963 (from 195 to over 1,700). Further, special agency hiring authorities have grown from 11 in 1951 to over 1,400. While these special hiring authorities are passed by Congress, they typically have been included in legislation by action of individual

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committees, so there is no unified consideration of the relative needs of the various Federal agencies. Thus, Congress as a body has no focus of oversight over the total number.

Some agencies have been given (and still use) hiring authorities they no longer really require, while others are chronically starved for executive leadership slots. The positions available for scientific managers are virtually unlimited, while other types of managers fall under the rigid restraints of the Government-wide quota. It is extremely difficult to staff new agencies or programs since special legislation is necessary to provide for any substantial number of executive positions.

Under the Senior Executive Service, total strength will be set by zero-based determination of need. Congress will have a biennial opportunity to revise Administration proposals for executive manpower levels.

Agency executive personnel requirements would also be determined by biennial zero-based review. Between reviews there is provision for interim adjustments to take care of new or expanded programs and discontinuance of programs.

#### Career Opportunities

Career executives have sharply decreased opportunities to advance above the GS-17 level. Four percent of GS-16 positions, 16 percent of GS-17 positions, and 39 percent of GS-18 positions, and 96 percent of Executive Level V and IV positions are noncareer. Despite this, over a number of administrations it has been found that from a quarter to a half of all noncareer supergrade positions are filled by former career employees. These former careerists fall mainly into two groups: employees who have retirement eligibility, and exceptionally able employees who have reached the career "ceiling" at a very early age. Recent studies have shown that career executives who do give up their status are lost to the Government service at the same rate as noncareer executives who had never had status. Since the ex-career group contains some of the most experienced and highly talented of all Federal executives, this can only be regarded as a loss to the taxpayer. The proposed legislation provides a method whereby career senior executives may serve in the higher level positions without having to terminate their Federal careers.

Under the Senior Executive Service, positions would be classified as Career Reserved and General. The former could be filled only by career executives. General positions could be filled by career or noncareer executives. (The total noncareer appointees Government-wide could not exceed 15 percent of the total Senior Executive Service; a

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figure approximating the existing level of noncareer positions at the higher grade levels. The highest levels of positions in the Service will most often be classified as General. Career executives would retain their career status regardless of assignment. Thus, under this proposal career executives in high-level jobs would not be adversely "labeled" during changes in Administration unless they had carried out their responsibilities in a conspicuously partisan manner.

#### Assignment Flexibility

When a Presidential appointee finds a key position encumbered by a career appointee who does not work well with the new team, he would like to replace the career appointee with someone in whom he has confidence.

However, reassigning incumbent career executives is very difficult, in large part because of protections against loss of rank.

There are three contributors to the problem: the classification of most positions as "career", the tenure which the incumbent has in the position and the extremely complicated processes of qualification review and position classification which must take place between the agency and the Civil Service Commission. Managerial positions at the supergrade level are now classified as "career" or "noncareer" based on whether or not the incumbent will be deeply involved in the advocacy of controversial Administration programs, or will participate significantly in the determination of major Administration policies. The fact is, however, that executive positions do not array themselves neatly in these respects. They fall into a continuum with a large "gray area" where the nature of the policy involvement in a particular position varies from time to time depending on the manner in which the incumbent operates and on whether the program is in an innovative or a maintenance stage.

At present, an incumbent of a position classified as "career" has tenure rights. Agencies must go through full adverse action proceedings if they propose to reduce such an incumbent in "rank." "Rank" has not been interpreted as "grade" or "salary," but is a subjective concept which at its most concrete refers to the echelon to which the incumbent reports. This has represented a very substantial impediment to reassigning incumbents at the executive level.

The variety of external controls by the Civil Service Commission over executive personnel actions further contributes to the problems. Top agency officials feel, with some justification, that they are being held responsible for enormous programs, but lack the authority to pick qualified people in whom they have full confidence. The frustrations engendered by the rigidities of the present system often cause Administration appointees to reject career people who in a freer environment they might well accept.

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The new General category of positions would permit agency heads to fill a specified number of critical jobs with either a career or a noncareer appointee. Secondly, by eliminating "rank" as a factor in selection and by exempting reassignment from adverse action procedures, it would be possible for agency heads to move an incumbent from a particular position (but not from the Senior Executive Service or Federal service) without the implication of "fault." Finally, by eliminating many review stages, movement within the Service will be facilitated.

Together, these features would give agency heads greater latitude to determine which positions are especially crucial to program accomplishment at a particular time and to fill these positions with qualified executives of their own selection, while the limitation on noncareer appointees would effectively prevent future increase in the noncareer complement. By having a Congressionally mandated ceiling of 15 percent on non-career appointments there is in fact greater protection against politicization of the higher levels than presently exists.

#### Quality of Performance

While many present executives are highly capable, there are also some who are not performing at an optimum level. One chronic problem is the appointment to managerial positions of highly capable professionals who are ill-prepared to take on their new responsibilities.

The Senior Executive Service provides for the managerial qualifications of all career appointees to be approved by public-private qualifications panels within the Office of Personnel Management. Once candidates have had their managerial qualifications approved by the Office of Personnel Management, the agency head would determine the relative qualification of individuals for a particular position within the agency. Agencies will be required to have systematic executive development programs to insure that employees receive necessary preparation for managerial duties.

#### Performance Appraisal

At present, executive performance is rarely evaluated rigorously in terms of program accomplishment or meeting goals in such areas as equal employment opportunity and affirmative action, productivity, organizational accomplishment, and cost control. Cost-cutting is discouraged. Managers who do not use their entire budget in one year



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not only receive no recognition but indeed are apt to find themselves with a smaller budget allocation the following year. Executives who are clearly ineffective can be removed, although a considerable effort is normally required to do so. It is virtually impossible, however, to remove an executive whose performance is merely marginally adequate. Under the Senior Executive Service, managers would be evaluated periodically with special emphasis on the achievement of agreed-upon organizational goals. Executives who are found to be severely deficient could be removed from the Senior Executive Service, as could executives who consistently perform in a mediocre fashion. To balance these negative incentives, the Service would provide that highly successful executives could receive substantial performance incentive pay.

The requirement of systematic evaluation of managerial performance alone should pay dividends in improved management. When coupled with the ability to reward effective managers and to remove the incapable, the improvement could be highly significant.

#### Multiplicity of Authorities and Laws

There are now a variety of authorities under which executives may be appointed, and they have differing requirements and conditions of employment. For example, under a Public Law 313-type authority, a science manager can be hired into a competitive (career) position without having to undergo the normal competitive staffing process. He can be paid any salary which does not exceed the statutory limit and which the Civil Service Commission finds appropriate in view of his qualifications. Conversely, other science managers appointed under non-quota hiring authorities are subject to much more rigorous entry procedures. They must compete in open competitive staffing processes. Their positions are classified for pay purposes by the Civil Service Commission on the basis of duties performed rather than qualifications. The Commission must also approve their qualifications for assuming their positions. The differences between systems encourage agencies to use Public Law 313-type positions as a kind of revolving door. Employees brought into the Government noncompetitively via this mechanism are shifted to non-quota spaces without ever undergoing the competitive entry process. The vacant PL-313 authority is then used again to bring in other employees noncompetitively.

The Senior Executive Service provides for coverage of all agencies and personnel systems. Presidential exceptions could be made for services with long-standing comprehensive personnel systems. Any excepted system could be later included by Presidential action without additional legislation.

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#### More Efficient Procedures

Under the existing system an agency wishing to establish and fill, for example, a new noncareer, nonscientific supergrade position must go through nine or more steps.

It is not necessary that each step be done sequentially, but even when several steps take place simultaneously, the necessary justifications and analyses are time-consuming for both the Commission and the requesting agency. Similarly lengthy procedures apply for other types of positions.

Under the Senior Executive Service, the agency would have its quota of executive positions established in advance for a 2-year period. Needed adjustments within limits could be readily made. The Office of Personnel Management would no longer classify positions by grade or determine if they are career or noncareer. It would determine if career candidates for initial entry into the Senior Executive Service meet managerial qualifications; the agency head would be responsible for approving qualifications for a particular position and for noncareer appointees. (This applies only to initial Senior Executive Service entry.) For movement within the Service--now 55 percent of all staffing actions--the agency head would have complete approval authority. Moreover, in filling positions from within the Government prior certification of eligibility for the Service by the Office of Personnel Management would be the rule. (Thus, there would be very little case-by-case qualification approval activity.) The establishment and staffing process for a position, which now has up to nine steps, would in most cases be reduced to two.

#### Assuring Compliance With Merit Principles

The Office of Personnel Management will have fundamental responsibility for assuring that the operations of the Senior Executive Service are in compliance with the merit principles established under title I of this Act. In addition, the Merit Systems Protection Board will be responsible for conducting studies to assure that Government-wide and agency personnel management practices and systems, including the functioning of the Senior Executive Service, are consistent with the basic merit principles. Furthermore, the Special Counsel within the Merit Systems Protection Board will be authorized to investigate and prosecute violations--in the Senior Executive Service as well as the rest of the civil service--of prohibited political activities, other prohibited personnel practices, and reprisals against employees for lawful disclosure of illegalities and improprieties.

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#### Compensation

The limits on maximum salary for General Schedule employees cause the pay of those in upper grade levels to remain constant while the pay of their subordinates continues to increase annually to maintain comparability with private sector rates. Prior to the adjustments recommended by the 1976 Commission on Executive, Legislative, and Judicial Salaries, Level V executives were receiving the same pay as their subordinates in grades GS-16, 17, and 18 and the higher pay steps of GS-15. (For a time they received less pay than their subordinates.) Unless changes are made in the system for setting pay, a new salary freeze will soon set in. Such freezes result in increases in turnover and serious loss of morale. Some individuals leave to take better-paying positions outside government; many retire. Existing retirement laws make it more advantageous in many cases for an executive with a frozen salary to retire rather than to remain on the job since retirees are eligible to receive cost-of-living increases. Studies suggest that under these conditions the more capable executives (who can readily find other employment) leave at a greater rate than marginal managers. This represents a great loss of expertise to the Government.

Under the Senior Executive Service, the President would establish at least five executive salary rates. The lowest would be at the midpoint of GS-15; the highest at 96 percent of Executive Level III. Longevity pay increases would be abolished and annual performance pay substituted instead. Under the proposal highly able executives could substantially increase (up to 20 percent) their compensation for a particular year through performance awards.

#### Incentive Awards

For the most effective career executives the President and the Office of Personnel Management could confer a personal rank and stipend. Up to 15 percent of active executives could be given the personal rank of "Meritorious Executive", which would carry a stipend of \$2,500 for each of five years. No more than 1 percent of active executives could have the rank of "Distinguished Executive" which would carry a stipend of \$5,000 for each of five years.

#### Minorities and Women

In 1969, 1.9 percent of supergrade positions were held by minorities and only 1.6 percent by women. Affirmative action efforts have increased these percentages to 4.4 percent for minorities and 2.8 percent for women (as of May 1977). It is unfortunately the case, however, that much of this still small increase has occurred among noncareer positions. The regular career promotion process is still not functioning to bring women and minorities into key management positions.

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It is clear that for some time it will be necessary to continue and even step up aggressive recruiting for minorities and women to fill executive positions. The bulk of executive vacancies, however, are now, and will continue to be, filled from within the Government. Therefore, in order to make a permanent improvement in the woefully unrepresentative numbers of women and minorities in key positions, it is essential to bring these excluded groups into the promotion pipeline and prepare them to assume managerial responsibilities. The Senior Executive Service mandates an open, systematic executive development program with special emphasis on identifying minorities and women for development. It is only in this way that an enduring solution to this problem can be achieved.

#### Operating Costs

Elimination of various pre-audit functions (principally, classification and qualifications reviews) by the CSC will result in an annual saving of \$600,000 by the Office of Personnel Management (24 staff years). Additional functions for the Office of Personnel Management, however, will cancel out this saving:

Executive Development	\$ 75,000 (3 staff years)
Certification for Entry into Service	200,000 (8 staff years)
Brokering Mobility	75,000 (3 staff years)
Executive Personnel Budgeting	200,000 (8 staff years)
Evaluation	50,000 (2 staff years)
	<u>\$600,000</u>

Agencies, which will be freed of much of the extensive justification process now required for supergrade actions, should also realize savings, estimated at \$1,625,000 annually. They, too, will have offsetting additional costs:

Executive Development (incl. staff, tuition & travel costs)	\$2,000,000
Executive Personnel Budgeting	225,000 (9 staff years)

This, then, would amount to a net increase in annual operating cost of \$600,000.

#### System Cost

The salary structure could be designed to cost about the same as the existing system--longevity payments being replaced by performance

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incentive payments. New benefits could account for about \$7.5 million annual cost.

Many intangible savings can be expected. One of the most significant is in elapsed time for processing executive personnel actions. Many external controls have been dropped and most of those retained could be applied in advance of a given staffing action. The elapsed staffing time under the existing system is highly variable; it can be as little as 6 weeks or as much as 6 to 9 months if the case is complicated. The new system will permit the typical staffing action to be completed within 6 weeks. The savings in program accomplishment resulting from filling critical positions promptly cannot be estimated, but would be considerable.

More tangible savings can be expected from the increased flexibility afforded to agency heads in the use of their executive resources. It is estimated that permitting agencies to assign executives where they can make a maximum contribution can result in a 2 to 3 percent reduction in the total number of executive positions (assuming constant program). The annual saving in salary and benefits could be on the order of \$15.5 million (in 1977 dollars).

#### Conversion Costs

There will be a one-time Government-wide conversion cost of about \$1 million, mostly for preparation and dissemination of regulations and instructions, and processing of conversion actions and payroll changes.

Disregarding one-time costs, the net annual tangible savings could be about \$7.5 million.

TITLE V PAY FOR PERFORMANCE

PURPOSE

The purpose of this title is to provide that certain pay increases shall be based upon the quality of individual job performance and contribution to the organization rather than upon length of service.

JUSTIFICATION

Merit Pay Plan for Senior Managers and Supervisors

Recent studies and reports by the Civil Service Commission staff, the General Accounting Office, the President's Panel on Federal Compensation, and the Federal Personnel Management Project concluded that pay plans for management level personnel should be based upon merit rather than length of service. While title 5 now requires that "pay distinctions be maintained in keeping with work and performance distinctions," the current method of within grade pay advancement within the rate range for senior managers and supervisors and the extensive appeals mechanism are not truly supportive of this requirement. Further, the only additional tool for accelerating basic pay within a rate range is through the quality step increase (QSI). However, the amount which may be granted is small (one step - equivalent to approximately 3 percent of pay) and restricted (no more than one QSI each 52 weeks) relative to similar increases granted to outstanding senior managers in the private sector. Therefore, the manner in which within grade increase funds are currently expended provides virtually no flexibility to make significant pay distinctions among senior managers and supervisors. Barely acceptable performers will generally experience the same progression through the pay range as do many exceptional performers. The new merit pay system would remove the barriers to increased management discretion and reward quality job performance rather than time in grade.

6.01

## TITLE VI RESEARCH AND DEMONSTRATION AUTHORITY

### PURPOSE

The purpose of this title is to provide the Office of Personnel Management with the authority to conduct public management research, to carry out demonstration projects which test new approaches to the conduct of personnel management in the Federal service, and to waive specific portions of personnel laws in order to engage in controlled experiments.

### JUSTIFICATION

#### Encouraging and Expanding Public Management Research

The objective of Federal personnel management is to create and maintain a competent, productive, and efficient public service dedicated to meeting national goals and being responsive to the needs of all citizens. However, experience has taught us that Federal personnel systems sometimes fail to cope with today's public management issues.

The government simply does not have an organized program of research which will give it a factual basis for changes in personnel policies. Similarly it lacks authority to conduct small scale experiments on promising ideas. As a result, it is often necessary to make systemwide changes before ideas have been tested in practice.

Although Federal personnel management problems are growing in complexity, the Government invests little in civilian personnel research. In defense agencies, the Government has applied a rational approach to the developing and buying of major defense systems. Similar testing of new ideas occurs regularly in the physical and biological sciences. Comparable investment in research and experimentation in the management sciences has not been made. As a matter of fact, the Federal Government lacks a specific commitment to management research and a specific authority to support and conduct management research.

The proposed amendment would authorize the Office of Personnel Management (OPM) to support a public management research program which would be directly related to the management improvement needs of agencies. The OPM could begin by making use of research completed or underway in State and local governments, the military services, the private sector, and universities. Beyond this, the proposed amendment would provide the OPM with the flexibility needed either to conduct research or contract out

research projects to Federal agencies, State and local governments, educational institutions, public interest organizations, and the private sector. Finally, the OPM would assume a leadership role of identifying public management research needs, reviewing proposed research projects, coordinating research activities, assessing the value of completed research, and applying research results to the solution of agency problems.

A modest investment of resources toward basic and applied public management research should produce enormous benefits in the form of new approaches, theories, frames of references, and processes which would make more efficient use of existing individual and organizational resources. Additionally, the research effort would encourage innovation in the design, development, and execution of systems of personnel administration which would improve management of the Government's human resources and thereby improve delivery of service to the public.

#### Demonstration Projects

The maintenance of a dynamic personnel system requires the continual development and implementation of modern and progressive concepts, procedures, and work practices to facilitate improved employee performance and efficiency. Improvements in the management of the Federal workforce carry the potential of enormous impact, not only on the Government's internal efficiency and on keeping costs down, but on the effectiveness of specific Government programs and services. In spite of the far-reaching potential that system improvements could have, managers are often reluctant to invest time and resources in making those improvements because of uncertainty as to whether proposed changes would work. The uncertainty of the consequences of system changes is a big gamble which managers often are not willing to risk. What is needed is a mechanism to reduce the amount of risk involved by getting as many hard facts about the effect of the proposed changes as possible. That mechanism is what this proposed demonstration project authority would provide.

Moreover, ideas are proposed from time to time to improve Federal personnel management and for solving some of the problems personnel directors face every day. These ideas are rarely tested for their feasibility or effect before being proposed or put into effect. Authority to conduct experimental demonstration projects would enable policymakers to explore new concepts and approaches to particular aspects of personnel management at less cost and with less risk than whole-system changes would require and enable the determination of the likely effects and ramifications of proposed policy changes before making commitments to put them into effect systemwide.